Supreme Court, U.S.
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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
RONALD GILGALLON, EILEEN GILGALLON
SHAWN GILGALLON – PETITIONER
V.
THE COUNTY OF HUDSON, ROBERT JANIZEWSKI, FRANCIS DELEONARDIS, MARK MORCHEL, MICHAEL CIFELLI, THE BOARD OF CHOSEN FREEHOLDERS, NEIL CARROL, VINCENT ASCOLESE, NEPTALIA CRUZ, WILLIAM BRAKER, NIDIA DAVILA-COLON, WILLIAM O'DEA, ALBERT CIFELLI, SILVERIO VEGA, MAURICE FITZGIBBONS, CONNELL FOLEY LLP, JOHN P. LACEY, LABOR MANAGEMENT CONCEPTS INC., JOHN MONROE, STATE OF NEW JERSEY, JOSEPH TRAPP, and ABC CORPORATIONS 1-10 (a fictitious corporation) and JOHN and MARY DOES 1-10 (fictitious persons)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AND THE COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can the District Court issue a permanent injunction pursuant to the Re-Litigation exception to the Anti-Injunction Act if the claim sought to be enjoined was never previously decided by a Federal Court, and, are the Courts obliged to demonstrate that the issue or claim was previously decided?

2. Is the District Court required to make findings of fact and correlate them with conclusions of law in support of its opinion pursuant to Fed. R. Civ. P. 52, and is the Appellate Court required to make an assessment of the District Court's findings, or the lack thereof, in its own opinion?

3. Does a permanent injunction issued pursuant to the Re- Litigation exception to the Anti-Injunction Act by the United States District Court enjoining a party from pursuing claims in New Jersey's Superior Court violate the party's right to due process if, in fact, the Court cannot satisfy any exceptions to the Statute 28 U.S.C.A. 2283?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

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CONSTITUTION FOURTEENTH AMENDMENT (DUE PROCESS)

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PRELIMINARY STATEMENT

The United States District Court failed to make any findings of fact concerning petitioners' argument of spoliation of evidence against the County of Hudson pursuant to Fed R Civ P. 52. On appeal, the Third Circuit failed to address the petitioner's arguments concerning this issue, and subsequently it failed to make any findings of fact.

The petitioners filed a complaint in New Jersey's Superior Court. The petitioners alleged that their former attorneys engaged in legal mal practice during an action filed in the United States District Court under docket number 00-591. Shortly thereafter, the petitioners filed a motion to amend the complaint to include the allegation of spoliation of evidence against the County of Hudson in New Jersey and its corporate counsel, Michael Dermody. The newly named defendants filed a motion for summary judgment. The motion was denied. Rather than appeal the decision in State Court, the defendants sought relief in the United States District Court. The motion was filed under docket number 00-591. The defendants argued that the issue of spoliation of evidence had been previously decided during civil action 00-591. The Court issued its decision. The petitioners were enjoined from pursuing claims against corporate counsel, Michael Dermody pursuant to the relitigation exception to the Anti-Injunction Act. The Court did not make any findings of fact concerning the issue of spoliation of evidence. Additionally, the Court decided not to include the County of Hudson in the order because they were not a party in civil action 00-591.

After the District Court order had been issued, the New Jersey Superior Court ordered discovery. The discovery process yielded newly discovered evidence that solidified the allegations of spoliation of evidence. The petitioners filed a motion for leave to amend the complaint to include this newly discovered evidence. Rather than file a motion for summary judgment, the defendants filed a second motion in the United States District Court. Once again, they asked the District Court to enjoin the petitioners from pursuing the claim of spoliation of evidence in New Jersey's Superior Court pursuant to the relitigation exception to the Anti-Injunction Act. However, this time the defendants filed the motion under docket number 02-5948. Obviously, dissatisfied with the decision in the earlier court proceeding not to include the County of Hudson, the defendants filed a lateral application before a different judge.

An evidentiary hearing was held on November 28, 2005. The petitioners argued the District Court had already decided the matter concerning the County of Hudson. They argued that civil action 02-5948 had absolutely no relationship with the allegations concerning civil action 00-591 filed in New Jersey's Superior Court. Despite this information, the Court issued a permanent injunction against petitioners from pursuing any allegations against the County of Hudson or its' agents in any Court. The order was issued under civil action 02-5948.

In response, the petitioners filed a motion for reconsideration. The motion was denied. The Court did not make any findings of fact that the allegation of spoliation of evidence claim had been previously

decided in either civil action 00-591 or 02-5948.

After the orders were issued, the petitioners modified the State Court complaint. The removed all the allegations against the County of Hudson except the spoliation of evidence during civil action 00-591 claim. The petitioners then filed a new motion for leave to amend the complaint.

The defendants responded by filing a third motion in the United States District Court. Once again, the motion was filed under docket number 02-5948.

The defendants asked the Court to hold the petitioners in contempt of the order issued on January 4, 2006 enjoining them from pursuing claims against Hudson County in any Court. In response, the petitioners withdrew the allegations against Hudson County pending appeal. Despite the withdrawal, the District Court found the petitioners to be in contempt of its order. The Court would later order the petitioners to pay $35,000 in legal fees and costs to defendants.

The petitioners appealed the orders issued by the United States District Court. The Third Circuit denied the appeal. The Court ignored petitioners' argument that the District Court failed to make any findings of fact concerning the spoliation of evidence issue being previously decided. In fact, the Circuit Court failed to make any findings of fact to support its own order.

The petitioners argue that it is not appropriate to avoid unpopular decisions by ignoring arguments presented to it especially if the action violates a parties right to due process in a State Court proceeding. The permanent injunction issued by the

District Court clearly violates the anti-injunction act, as the allegation of spoliation of evidence against the County of Hudson was never previously decided.

The petitioners filed a motion for an en banc hearing. The motion was denied and the Appellate Court did not address the District Court's failure to make findings of fact on the issue of spoliation of evidence involving Hudson County. It is for this reason that the petitioners file for a writ certiorari.

LEGAL ARGUMENT

The District Court and The Appellate Court Have Violated 28 U.S.C.A. 2283 (1 Stat 76)

The petitioners filed a complaint against the County of Hudson in New Jersey's Superior Court. The complaint alleged that the County of Hudson engaged in spoliation of evidence during an earlier Federal proceeding in the United States District Court for the District of New Jersey.

Prior to filing the complaint in New Jersey's Superior Court, the petitioners had two complaints dismissed in the United States District Court for the District of New Jersey.

The complaints were filed under docket 00-591 and 02-5948. The complaint under docket number 02-5948 was presided over by Judge Dennis Cavanaugh. The complaint under docket number 00-591 was presided over by Judge William Bassler. The complaint filed in New Jersey Superior Court alleges that the spoliation of evidence occurred during civil action 00-591.

The defendants in the State action moved for summary judgment. The motion was denied. Rather than appeal this decision in State Court, the defendants petitioned the United States District Court for relief. They also asked the District Court to issue a permanent injunction against the petitioners from pursuing claims against a Michael Dermody and the County of Hudson. The petition was filed under docket number 00-591. Judge William Bassler issued an order partially granting the request (G).

The Court enjoined petitioners from pursuing allegations against Michael Dermody but not the County of Hudson. The order was issued under the relitigation exception of the Anti-Injunction Act.

After discovery in the State Court proceeding the petitioners modified their complaint and they filed for leave to amend it. The defendants immediately filed another petition with the District Court to enjoin the petitioners from proceeding with claims against Hudson County in the State Court under the relitigation exception to the Anti-Injunction Act. However this time the application was filed under docket number 02-5948. Judge Dennis Cavanaugh issued a permanent injunction against the petitioners from proceeding against the County of Hudson with any claims in any Federal or State Court (E).

The order issued on January 4, 2006 violates 28 U.S.C.A. 2283. "A Court of the United States may not grant an injunction to stay proceeding in a State Court except as expressly authorized by an act of Congress; or when necessary in aid of its jurisdiction or to protect and effectuate its judgments". 28 U.S.C.A. 2283, the third exception is known as the "relitigation exception". National R.R. Passenger Corp. v Pa. R.R. Pub Util. Comm, 342 F3d 242, 255 (3rd Cir 2003). The relitigation exception was designed to allow Federal Courts to prevent State Courts from deciding an issue that was previously decided in Federal Court. Chick Kam Choo v Exxon Corp, 486 U.S. 140, 147-48 (1988).

During a Show Cause hearing on November 28, 2005, the petitioners provided clear and concise evidence demonstrating that the allegation of fraudulent concealment or spoliation of evidence had never been previously decided during civil action 00-591. They also argued that the question was never previously decided by Judge William Bassler (H). Despite this information, the Court issued a permanent injunction pursuant to the relitigation exception to the Anti-Injunction Act on January 4, 2006 (E).

The Court never indicated how it determined that the spoliation of evidence allegation was previously decided in civil action 00-591. A review of the earlier opinion demonstrates that indeed, the issue was never previously decided (F). Chick Kam Choo emphasized that claims must be actually litigated in Federal Court to qualify for the relitigation exception. Chick Kam Choo, 486 U.S. at 148. Chick Kam Choo has been interpreted by commentators Wright, Miller and Cooper as requiring a narrow reading of the relitigation exception.

"There can be no Federal injunction against State Court proceedings based on a claim preclusive or issue preclusive effect of a formal judgment unless the judgment has actually decided the claim or issue in question. It requires an assessment of the precise state of the record and of what the earlier order actually said". Wright, Miller and Cooper, Federal Practice and Procedure, 4226 (Supp 1977). The District Court made no such assessment.

The Statute was one of the first passed by Congress. Congress passed the Anti-Injunction Statute in 1793. One "Supreme Court" was created by the Constitution and Congress was given power to create other Federal Courts. In the first Congress this power was exercised and a system of Federal trial and Appellate Courts with limited jurisdiction were created by the Judiciary Act of 1789; 1 Stat 76; Atlantic Coast line R.R. Co. v Locomotive Engineers, 398, U.S. 281, 287 (1970). While the lower Courts were given certain powers in the 1789 Act, they were not given power to review directly cases from State Court and they have not been given such powers since that time. The District Court of New Jersey and the Appellate Court of the Third Circuit are setting a dangerous precedent for accepting cases that are clearly within the jurisdiction of the State Court. As a matter of fact, the United States Courts do not even recognize an allegation of spoliation of evidence as a separate tort if detected after a final judgment has been entered and time has lapsed, Kolanovic v Gida, 77 Supp 2d 595, 601 (D.N.J. 1999). Although New Jersey Courts take the same position on a spoliation of evidence allegation, they will allow a fraudulent concealment claim to be maintained. Rosenblitt v Zimmerman, 166 N.J. 391 (2001).

On its face, the present act is an absolute prohibition against enjoining State Court proceedings unless the injunction falls within one of three specifically defined exceptions. The Supreme Court has held, "The Anti-Injunction Act is not a statute conveying broad general policy

for appropriate ad hoc application, legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions." Amaglamated Clothing Workers v Richmond Bros, 348 U.S. 511, 515, 516 (1955). Moreover, since the statutory prohibition against such injunctions in part rests on the fundamental constitutional independence of the States and their Courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in State Court should be allowed to continue unimpaired by intervention of the local Federal Courts, with relief from error, if any, through the State Appellate Courts and ultimately, the United States Supreme Court.

The United States District Court and the Third Circuit Court of Appeals interfered with the constitutional independence of the State and its' citizens. The permanent injunction issued by the Court does not satisfy any of the specifically defined exceptions pursuant to 28 U.S.C.A 2283. The issue of spoliation of evidence against the County of Hudson was never previously decided by the Federal Court. The defendants in the State Court proceeding simply circumvented the decision by the State Court and a Federal Court of competent jurisdiction to get the results they wanted, a very dangerous precedent that must be rejected by this Court.

No Findings of Fact

The United States District Court did not make

any findings of fact concerning evidence of a Federal decision on the allegation against the County of Hudson for spoliation of evidence during civil action 00-591. The obvious reason is that there is no evidence. A review of the opinion issued on January 31, 2001, under docket number 00-591, clearly demonstrates this. The District Court scheduled a Show Cause hearing on November 28, 2005 to determine whether it would issue a permanent injunction enjoining the petitioners from pursuing the spoliation of evidence claim against the County of Hudson in New Jerseys' Superior Court pursuant to the relitigation exception to the Anti-Injunction Act. The petitioners argued that there was absolutely no evidence to indicate that the Federal Court previously decided this allegation. (H). The Court issued the injunction anyway (E). The Court did so without even addressing the allegation of spoliation of evidence issue. Because there was no evidence to support its decision, the Court ignored the issue and made no findings of fact.

The United States District Court must make findings of fact in accordance with Fed R Civ P 52. "In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specifically and state separately its conclusions of law therein, and judgment shall be entered pursuant to rule 58; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its actions... [emphasis supplied] Fed R Civ P 52.

Because the District Court did not make any findings of fact in its January 4, 2006 opinion/order, the petitioners modified the State Court complaint and filed for leave to amend it. The petitioners left only the spoliation of evidence claim against Hudson County during civil action 00-591 in it.

Once again, the defendants petitioned the United States District Court for relief. This time they asked the Court to hold the petitioners in contempt for violating the January 4, 2006 order. A preliminary hearing was held on May 18, 2006 (1). During the hearing, the petitioners argued that the spoliation of evidence claim filed in State Court had never been decided in a Federal Court. The Court scheduled a Show Cause hearing anyway. The hearing was scheduled for June 22, 2006 (J). During the hearing, the petitioners advanced their arguments in detail with supporting evidenc 8 There was no question that the spoliation of evidence claim against Hudson County had never been previously decided. Despite the undisputed evidence, the Court found the petitioners to be in contempt of the January 4, 2006 order (C). The opinion issued on July 10, 2006 did not indicate that the spoliation of evidence claim was previously decided by a Federal Court once again. The Court refused to make any findings of fact on this issue.

In all cases heard in the State of New Jersey, the trial Court is obliged to state clearly its factual findings and correlate them with the relevant legal conclusions. Kenwood Assoc. v Bd of Adj of Englewood, 141 N.J. Super 1 (App Div 1976); State v Singletary, 165 N.J. Super 421, 424-25 (App Div),

Certif Denied, 81 N.J.50 (1979); Wertlake v Wertlake, 137 N.J. Super 476, 485-86 (App Div 1975) Blaisdell Lumber Co v Holton, 242 N.J. Super 98, 102 (App Div 1990). The District Court did not make findings of fact because there is no evidence to support its opinion that the spoliation of evidence claim in New Jersey's Superior Court was previously decided in Federal Court.

The opinion issued on January 31, 2001, during civil action 00-591 by Judge William Bassler, speaks volumes (F). The District Court was obliged to review it prior to making a determination. There can be no Federal injunction against State Court proceedings based on a claim preclusive or issue preclusive effect of a Federal judgment has actually decided the claim or issue in question. It requires an assessment of the precise state of the record and of what the earlier opinion/order actually said" Wright, Miller, Cooper, Federal Practice and Procedures 4226 (Supp 1997). The Court could not have conducted the required assessment since it is abundantly clear that the issue and claim was never previously decided.

The District Court failed to articulate its findings of fact and correlate them with relevant legal conclusions. Curtis v Finnerman, 83 N.J. 563, 570 (1980); See also Brochin & Sandler, Appellate Review of Facts in New Jersey Jury and New Jersey Cases, 12 Rutgers Law Rev 482 (1947), Conford, Findings of Fact and Conclusions of Law, 92 N.J.L.J. (1969).

At the time the District Court issued its contempt order on July 10, 2006, the petitioners' 12

appeal of the January 4, 2006 order was still pending in the Third Circuit. A briefing schedule had not been ordered. The petitioners filed a motion with the Appellate Clerk to amend the appeal to include the July 10, 2006 order. The Clerk denied the motion because the orders were not related. The petitioners filed a motion to have the decision reviewed by the panel.

The petitioners filed the briefs on appeal in the Third Circuit. Among other things, the petitioners argued that the District Court did not make any findings of fact on the issue of spoliation of evidence during civil action 00-591. They argued that the District Court did not have any evidence to indicate that this issue was previously decided by the Federal Court and they argued that the District Court did not conduct an assessment of the earlier opinion/order as required. Wright, Miller, Cooper, Federal Practice and Procedure, 4226 (Supp 1997).

The Appellate Court issued its decision on June 19, 2007. It affirmed the decision of the District Court issued on January 4, 2006. It refused to review the appeal of the order issued on July 10, 2006. The Appellate Court did not even address the District Courts' failure to make findings of fact on the main issue in this case (B).

In response, the petitioners filed a motion for an en banc hearing. The Court did not allow the re-hearing (A).

It is for this precise reason that the District Court is required to make findings of fact. The District Court simply ignored the petitioners' arguments that the claim against Hudson County in New Jersey's Superior Court was never decided

in the Federal Courts, and then issued a permanent injunction under the pretense that the issue was previously decided by the Federal Court.

The petitioners ask this Court to remand this order back to the United States District Court for the District of New Jersey and assigned to Judge William Bassler, the Judge that issued the original opinion and order in civil action 00-591. The petitioners ask this Court to remand this matter back to this Court with instructions. The Court should be required to indicate by reference, when the issue of spoliation of evidence against Hudson County was decided during civil action 00-591. The petitioners allege that the County of Hudson ordered its corporate counsel to withhold evidence and misrepresent himself to a judge during civil action 00-591. The final order in this matter was issued on January 31, 2001 (F). The evidence supporting this claim did not surface until 2005. It is axiomatic that the issue was never decided by the Federal Courts. The Courts should not be allowed to ignore arguments in order to avoid making unpopular decisions. Such notions compromise the integrity of our judicial system, and this could have serious implications to the trust that citizens have for our Courts.

Did The Permanent Injunction Issued by the District Court Violate Petitioners' Right To Due Process in New Jersey's Superior Court?

The petitioners have already demonstrated that the allegation of spoliation of evidence was never previously decided during civil action 00-591 (F 1-

13). They have also demonstrated that the District Court issued two separate orders suggesting that this issue was previously decided (E-C). However, the opinion does not disclose how the Court reaches this position (E-C). On the other hand, the petitioners presented numerous documents during evidentiary hearings to establish that this claim was never previously litigated in Federal Court (H-I). The Court issued its permanent injunction without making any findings of fact on the spoliation of evidence issue (E). It issued its contempt order without making any findings of fact on the spoliation of evidence issue (C). The Court simply ignored the issue presented by petitioners as though it was never discussed. There is absolutely no evidence in this case to indicate that the Federal Court previously decided the spoliation of evidence claim against Hudson County during civil action 00-591. In fact, the County of Hudson was not named in the case under docket 00-591. The relitigation exception only allows Federal Courts to enjoin issues of claims that were previously decided in a Federal Court. Texas Commerce Bank Nat'l Assn v Florida, 138 F 3d 179, 182 (5th Cir 1998); quoting Chick Kam Choo, 486 ct 146. The claim of spoliation of evidence was never decided by the Federal Courts.

The petitioners obtained the information supporting this claim through depositions conducted in July and September of 2005. The final order under docket number 0-591 was issued on January 31, 2001 (F). The petitioners could not have filed a complaint alleging spoliation of evidence in the Federal Court since the Federal

Court does not recognize spoliation of evidence as a separate tort if detected after the final judgment has been entered and time has lapsed. Kalanovic v Gida, 77 Supp 2d 595, 601 (D.N.J. 1999). Where as the State of New Jersey allows a party to allege spoliation of evidence as a separate tort if it is maintained under the allegation of fraudulent concealment. Rosenblitt v Zimmerman, 166-N.J.-391 (2001).

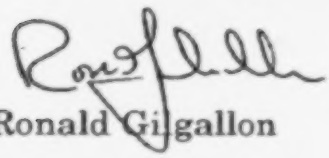
The petitioners filed a complaint against the County of Hudson in New Jersey's Superior Court alleging spoliation of evidence. The complaint withstood a motion for summary judgment. The District Court stopped petitioners from pursuing this claim in New Jersey's Superior Court under false pretense. The petitioners had a right to be heard. The District Court denied petitioners this right. Due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v Eldridge, 424 U.S. 319, 333, 96 S Ct 893, 902 (1976); Armstrong v Manzo, 380 U.S. 545, 552, 85 S. Ct 1187, 1191 (1965).

The permanent injunction issued by the District Court denied petitioners this most basic right.

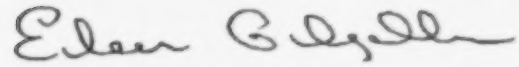
CONCLUSION

For all the reasons indicated above, the petition for a writ of centiorari should be granted.

Respectfully submitted,



Ronald Gilgallon



Eileen Gilgallon
October 23, 2007

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Supreme Court, U.S.
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SHAWN GILGALLON – PETITIONER
V.
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AND THE COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RONALD GILGALLON
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570-828-7978

APPENDIX

EXHIBITS

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EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1819

EILEEN GILGALLON;
RONALD GILGALLON;
SHAWN GILGALLON
V.
COUNTY OF HUDSON; ROBERT JANIZEWSKI; FRANCIS DELEONARDIS; MARK MORCHEL; MICHAEL CIFELLI; BOARD OF CHOSEN FREEHOLDERS; NEIL CARROLL; VINCENT ASCOLESE; NEPTALI CRUZ; WILLIAM BRAKER; NIDIA DAVILLA-COLON; WILLIAM O'DEA;
ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; CONNELL FOLEY LLP; JOHN P. LACEY; JOHN MONROE; STATE OF NEW JERSEY; JOSEPH TRAPP; ABC CORPORATIONS 1-10 (a fictitious corporation); JOHN AND MARY DOES 1-10
(a fictitious corporation)
Ronald Gilgallon
*Eileen Gilgallon
Appellants
See Clerk's Order dated 4/27/06

On Appeal from the United States District Court
For the District of New Jersey
(D.C. No. 02-cv-05948)
District Judge: Honorable Dennis M. Cavanaugh

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDEL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN AND ROTH,* Circuit Judges

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SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING *EN BANC*

The petition for rehearing en banc filed by Appellants having been submitted to the judges who participated in the decision of this Court, and to all other available circuit judges in active service, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing en banc is DENIED.

BY THE COURT:

/s/ Maryanne Trump Barry
Circuit Judge

Dated: July 20,2007

CH/cc: Ronald Gilgallon
Eileen Gilgallon
Michael A. Cifelli, Esq.
Edward Florio, Esq.

Judge Roth's vote is limited to panel rehearing only.

Exhibit B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1819

EILEEN GILGALLON;
RONALD GILGALLON;
SHAWN GILGALLON
V.
COUNTY OF HUDSON; ROBERT JANIZEWSKI; FRANCIS DELEONARDIS; MARK MORCHEL; MICHAEL CIFELLI; BOARD OF CHOSEN FREEHOLDERS; NEIL CARROLL; VINCENT ASCOLESE; NEPTALI CRUZ; WILLIAM BRAKER; NIDIA DAVILLA-COLON; WILLIAM O'DEA;
ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; CONNELL FOLEY LLP; JOHN P. LACEY; JOHN MONROE; STATE OF NEW JERSEY; JOSEPH TRAPP; ABC CORPORATIONS 1-10 (a fictitious corporation); JOHN AND MARY DOES 1-10 (a fictitious corporation)
RONALD GILGALLON
*EILEEN GILGALLON,
Appellants
*See Clerk's Order dated 4/27/06.

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 02-cv-05948)
District Judge: Honorable Dennis M. Cavanaugh

Submitted Under Third Circuit LAR 34.1(a)
January 5, 2007

BEFORE: BARRY, CHAGARES AND ROTH,
CIRCUIT JUDGES
(Filed: June 19, 2007)

OPINION

PER CURIAM

Pro se appellants Ronald and Eileen Gilgallon appeal the District Court's January 4, 2006 order enjoining them from pursuing litigation against the appellees in state court or any other court. Appellants also appeal the District Court's February 28, 2006 order denying their motion for reconsideration.

The lengthy procedural history of this case and the details of appellants' claims are well known to the parties, set forth in the District Court's thorough opinions, and need not be discussed at length. Briefly, the Gilgallons have filed repetitive and vexatious lawsuits in the state and federal courts for over ten years seeking to re-litigate issues that have been decided against them. We previously summarized this litigation in our opinion in Gilgallon v. Carroll, C.A. No. 05-2074, 2005 WL 2891686 (3d Cir. 2005).

After they were enjoined from litigating in federal court, the Gilgallons returned to state court and filed a complaint alleging malpractice against their former attorneys. They subsequently filed a second

amended complaint alleging claims against Hudson County Attorney Michael Dermody, who had been opposing counsel in the Gilgallon's first federal action. In Gilgallon v. Carroll, we affirmed the District Court's order enjoining the Gilgallons from litigating an action against Michael Dermody in state or federal court on the grounds that the injunction was necessary to protect and effectuate the District Court's prior judgments against the Gilgallons.

In a proposed third amended complaint in state court, the Gilgallons made allegations against the appellees. Appellees moved for an injunction barring the Gilgallons from proceeding in state court. By order entered January 4, 2006, the District Court enjoined the Gilgallons from pursuing the matter in state court against the appellees. The District Court denied the Gilgallons' motion for reconsideration, and the Gilgallons filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C.& 1291. Our review of the District Court's authority to issue an injunction under the Anti-injunction Act is de novo. In re Diet Drugs, 369 293, 304 (3d Cir. 2004). We review the injunction for an abuse of discretion; legal issues are reviewed de novo, and factual issues are reviewed for clear error. Id.

We first note that the scope of the appeal encompasses only the District Court's January 4th, and February 28th orders. Subsequent to those orders, the Gilgallons attempted to file a fourth amended complaint in the state court. By order entered May 18th, the District Court issued a temporary restraining order staying the state court litigation and ordered the Gilgallons to show cause

why they should not be held in contempt. By order entered July 12th, the District Court held the Gilgallons in civil contempt. The Gilgallons filed motions in this Court to amend the appeal to include these orders.

A party may file an amended notice of appeal from an order disposing of a motion specified in Fed. R. App. P. 4(a)(4)(A). See Fed. R. App. P.4(a)(4)(B)(ii). The District Court's May 18th and July 12th orders do not fall within this rule. By order entered August 7, 2006, the Clerk denied the motions to amend the appeal. The Clerk noted that "[t]he Court will lack jurisdiction to consider the propriety of the new orders since they have not been appealed." The Gilgallons did not file notices of appeal in the District Court from the May or July orders.

On appeal, The Gilgallons focus on the District Court's May and June orders and the allegations in the fourth amended complaint in the state court. The Gilgallons also argue that the District Court's actions violated their right to due process. These arguments are meritless. The Gilgallons were ordered to show cause why they injunction should not issue, they submitted a brief in opposition, and a hearing was held. Thus, they were given notice and an opportunity to be heard before the District Court entered its January 4, 2006 order.

Besides generally stating that the January 4th order violates the Anti-Injunction Act, the Gilgallons do not challenge the District Court's decision. Because allegations against the appellees in the third emended complaint in the state court concern issues that have been decided against the Gilgallons in their District Court actions, the

District Court's order was necessary to protect and effectuate its prioe judgments. The District Court did not err in denying the motion for reconsideration. Therefore, we will affirm the District Court's judgment.

EXHIBIT C

NOT FOR PUBLICATION
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.,
Hon. Dennis M. Cavanaugh
Plaintiffs,
v.
OPINION
COUNTY OF HUDSON, et al.,
Civil Action No.02-CV-5948(DMC)
Defendants.

Dennis M. Cavanaugh, U.S.D.J.:

This matter comes before the Court upon an Order to cause filed by the County of Hudson, Robert Janiszewski. Francis DeLeonardis, Mark Morchel, and Micheal Cifelli (collectively "Defendants", for this court to stay the motions currently pending before the New Jersey Superior Court and hold Eileen Gilgallon, Ronald Gilgallon, and Shawn Gilgallon ("Plaintiffs") in both criminal and civil contempt and civil confinement for violating this court's January 4, 2006 order and opinion. Oral

Argument was heard regarding this matter on June 22, 2006, at 9:30 A.M. For the reasons set forth blow, The Court grants Defendants' application in part and denies it in part.

1. Background

The facts of this case were discussed in detail in the court's January 4, 2006 opinion. In the interest of judicial economy those facts will not be reiterated again today. On January 4, 2006, this court issued an opinion and order granting Defendants County of Hudson, Robert Janizewsky, Francis Deleonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia Da Vilacolon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does, Order to show Cause permanently enjoining Plaintiffs from filing any further amended complaints or motions relating to Plaintiffs' security contracts in State Court or any other Court. Plaintiffs filed a motion for reconsideration, which the Court denied on February 28, 2006.

On May 3, 2006, this Court entered an Opinion and Order, granting in part ad reserving in part, Defendants' motion for rule 11 sanctions against Plaintiffs. This Court granted Defendants' request for monetary sanctions and directed Defendants' to submit a certification of services for all counsel fees and costs, individually and severally, associated

with defendants' efforts in response to Plaintiffs' Third Amended Complaint. The Court reserved on the issue of civil confinement, which a court may order pursuant to Rule 4.1 (b) of the Federal Rules of Civil Procedure when a party is found to be in contempt, until Third Circuit issues a decision on Plaintiffs' appeal of this Court's January 4, 2006 Opinion and Order.

After the court issues an injunction on January 4, 2006, Defendants' filed a motion for summary judgment in State Court. Plaintiffs' requested an adjournment on that motion,
which was granted. Then, in or around May of 2006, Plaintiffs moved before the Superior Court of New Jersey, Law Division, Hudson County, for permission to file a Fourth Amended Complaint against Defendants. In response, Defendants filed an order to show cause before this court on May 18, 2006, seeking a temporary stay of the New Jersey Superior Court action and requesting Plaintiffs to show cause as to why they should not be held in contempt for violating this Court's January 4, 2006 Order. Defendants allege the Fourth Amended Complaint contains the same allegations included in the Third Amended Complaint, upon which this Court issued a permanent injunction. On June 9, 2006, the parties appeared before the Superior Court of New Jersey for oral argument on Plaintiffs' motion to stay the Order to Show Cause proceedings before this Court, Which Judge Antonin denied. During the hearing, Judge Antonin stated:
I think I made it clear that for the purposes of going forward and prosecuting your legal

malpractice case, yes, you would be able to get discovery from the County, from the various people you named, the order that I signed permitting depositions and production of document and all of that, were for the suit within a suit. Not for actual claims being prosecuted in this against the County of Hudson or any of the other people named. I didn't Think that was misunderstand. I thought it was clear. But it was misunderstood, I'm clarifying it. My order did not- because this is an argument in the County advanced vigorously when you first came before this Court for relief...they contended that that's what you were trying to do, that you were trying to do an end run around the federal court that that's not what you were doing, and you assured the court and argued against the defendants that you had to prove your...underlying claim in order to prevail in the malpractice case.

(Transcript of Oral Argument, Gilgallon, et, al. v. Shea, et. al. HUD-L-4228-03, (Oral Arg. Tr." 16:10-17:7).

On June 14, 2006, Plaintiffs submitted a letter addressed to this court stating they were "withdrawing the allegation against Hudson County contained in the fourth amended complaint under docket number L-4228-03." Plaintiffs failed to submit any additional evidence of withdrawing the Fourth Amended Complaint other then this letter. This court heard oral argument on June 22, 2006, on Defendants' OTSC to stay the motions pending before the New Jersey Superior Court and hold Plaintiffs in both criminal and civil contempt and civil confinement for violating this Court's

January 4, 2006 Order and Opinion. The Court reserved its decision at oral argument in order to consider Defendants' request and Plaintiffs' arguments more fully. The Court now issues this opinion.

II. Discussion

A. Civil and Criminal Contempt

Defendants argue the Court should find Plaintiffs guilty of both civil and criminal contempt for violating this Court's January 4, 2006 order. Although the distinctions between civil and criminal contempt are often difficult to discern, the two are not one and the same.

"Contempts are neither wholly civil nor altogether criminal. And it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." Samuel Gompers v. Buck's Stove and Range Co., 221 U.S. 418, 441 (1911). Regardless of whether the proceedings are deemed civil or criminal, a party must be accused of violating a court order to conduct contempt proceedings. Id. The distinction between civil and criminal contempt lies in both the provable elements of the offense and the intended purpose of the Court's sanctions. McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949).

If a Court wishes to hold a party in civil contempt, the punishment is remedial and for the benefit of the complainant. Gompers, 221 U.S. at 441. "Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the

Court or to compensate for losses or damages sustained by reason of noncompliance." McComb, 336 U.S. at 190. Due to the fact that civil contempt sanctions are viewed as non-punitive and avoidable, fewer procedural protections are required when imposing civil sanctions than criminal contempt sanctions. Int'l Union, United Mine Workers of Am. V. Bagwell, 512 U.S. 821, 831 (1994). The Supreme Court has recognized that punishment by imprisonment may be remedial as well as punitive. Id. At 441-42. The Supreme Court of the United States has also found that civil contempt proceedings may result in both the imposition of a fine payable to the complainant and imprisonment for the party found in contempt. Id. At 442. In civil contempt proceedings, parties are usually imprisoned when they have refused to do an affirmative act required by a court order. Id. In these situations, imprisonment is not inflicted as a punishment, but is intended to be remedial by coercing the party to do what he or she has previously refused to do. Id. If the sentence is punitive to vindicate the authority of the court, it is considered a criminal contempt proceeding. Gompers 221 U.S. at 441.

B. Plaintiffs' Violation of this Courts January 4,2006 Order

On January 4, 2006, this Court issued an order and opinion enjoying Plaintiffs from pursing any further claims against Defendants arising from the denial of Plaintiffs' security guard contracts with the County of Hudson in the Superior Court of New

Jersey. As a result of this injunction, Defendants moved for summary judgment before Judge Antonin in State Court. Plaintiffs requested and were granted an adjournment and then sought permission to file a Fourth Amended Complaint. Defendants filed an Order to Show Cause in response to the Fourth Amended Complaint seeking civil and criminal sanctions against Plaintiffs for violating this Court's January 4, 2006 Order.

The Court Agrees with Defendants that Plaintiffs' proposed Fourth Amended Complaint violate this Court's January 4, 2006 Order. Previously, this Court entered an Order on June 2, 2004, which among other things, prohibited Plaintiffs from filing any more Complaints against Defendants before this Court arising from the denial of plaintiffs security guard contracts with the County of Hudson without first receiving permission from this court. In an attempt to circumvent this Court's June 2003 Order, which was affirmed by the Third Circuit on April 14, 2004, Plaintiffs attempted to file a Third Amended Complaint in State Court against Defendants again alleging claims arising from the denial of plaintiffs security contracts, without first seeking permission. Plaintiffs did so without seeking permission. In response, this court entered an order on January 4, 2006, enjoining Plaintiffs from pursuing any more claims against Defendants arising from the denial of plaintiffs' security guard contracts with the County of Hudson in any court, State of Federal. Plaintiffs again tried to

circumvent this Court's Order, by filing a Fourth Amended Complaint in State Court in May of 2006. Plaintiffs seek the same relief against Defendants in their Fourth Amended Complaint that Plaintiffs were barred from seeking when they filed their Third Amended Complaint. Specifically in the Third Court of the proposed Fourth Amended Complaint, Plaintiffs request "any and all damages that may have resulted from the prior litigations in civil action 00-591 and 02-5948...damages resulting from the misrepresentation of the taxpayers of Hudson County...damages to the Plaintiffs resulting from the dismissal of their claims in civil action 00-591 and 02-5948...and punitive, compensatory and nominal damages, interest, related costs and personal financial loss relating to this case." Plaintiffs requested identical relief in their Third Amended Complaint. The only difference between the Third and Fourth Amended Complaints is that Plaintiffs no longer ask the Court to investigate allegations of conspiracy, willful misrepresentation, and legal malpractice. Instead, Plaintiffs now seek an investigation into allegation of fraudulent concealment on the part of Defendants.

Plaintiffs assert they have uncovered new evidence during depositions of two member of the Board of Chosen Freeholders that have given rise to claims against Defendants for Fraudulent concealment. (Transcript of Order to Show Cause Hearing before Judge Cavanaugh on June 22, 2006, (OTSC Tr.") 20:5-7). However, Plaintiffs conducted these depositions prior to filing their Third Amended Complaint. (Id. At 28:22-25). All of

Plaintiffs' claims against Defendants regard to the security contracts have been considered by this Court and by the Applellate Division of the New Jersey Superior Court, District Judge Bassler, Magistrate Judge Hedges and District Judge Hayden. By raising the issue of "fraudulent concealment," Plaintiffs are once again attempting to circumvent this Court's orders. They are placing a new name on allegations they have previously raised. Furthermore, Judge Antonin recently noted during a motion hearing on June 9, 2006, that she had permitted Plaintiffs to obtain discovery from Defendants regarding their "suit within suit," but that she in no way had allowed Plaintiffs to file any claims against the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, and Micheal Cifelli. (Oral Argument Tr.16:10-17:7). This is exactly what Plaintiffs attempted to do with their proposed Their and Fourth Amended Complaints, which not only violates Judge Antonin's instruction but was also in violation of this Court's January 4, 2006 Order.

C. Plaintiffs Must be Held in Civil Contempt

Injunctions have been recognized as " extraordinary writs, enforceable by the power of contempt." Gunn v. Univ. to End the War in Vietnam, 399 U.S. 383, 388-89 (1970). Here the Court has found Plaintiffs to have violated the permanent injunction issued on January 4, 2006, enjoining them from pursuing this matter against Defendants in State Court. Due to the fact that Plaintiffs violated an injunction ordered by this Court, the Court has authority to hold them in

contempt. Plaintiffs were well aware of the Court's January 2006 Order when they filed their Fourth Amended Complaint. Due to the fact that the Court wishes to compensate defendants for the costs they incurred in response to Plaintiffs' Fourth Amended Complaint and wishes to deter Plaintiffs from any further violations of this Court's Order's, the Court holds Plaintiffs in civil rather than criminal contempt. Accordingly, Plaintiffs must pay a fine of $5000 to this court and reimburse Defendants all costs and fees associated with the Fourth Amended Complaint.

D. Plaintiffs' Withdraw of their Forth Amended Complaint

Prior to oral argument, this Court received a letter from Plaintiffs' on June 14, 2006, stating they were "withdrawing the allegations against Hudson County contained in the Forth Amended Complaint under docket number L-4228-03." Plaintiffs did not submit any additional evidence indication they had officially withdrawn their Forth Amended Complaint in State Court besides the letter addressed to this Court. Nothing in the letter indicated that anyone else had received a copy of this letter, At oral argument Plaintiffs announced they had filed a revised Fourth Amended Complaint withdrawing all references to the County of Hudson. (OTSC Tr. 4:23-25). It is not clear whether the allegations have been officially withdrawn in State Court because Plaintiffs have not provided any proof of doing so besides submitting a letter to this Court and supplying the Court with copy of a revised Complaint at oral argument.

Regardless of whether Plaintiffs have or have not withdrawn their original Fourth Amended Complaint, Plaintiffs still violate this Court's January 4, 2006 Order. Plaintiffs' attempt to withdraw the Complaint on the eve of oral argument does not erase their previous violations of this Court's Order. Plaintiffs are attempting to once again avoid the consequences of violating this Court's Order and it will not be tolerated. As such, it is irrelevant whether or not Plaintiffs' withdrew the Fourth Amended Complaint to this Court's decision to hold Plaintiffs in civil contempt. As explained above, Plaintiffs violated this Court's Order and therefore this Court holds them in civil contempt. Accordingly, Plaintiffs must pay the above penalty and reimburse Defendants all costs associated with the Fourt Amended Complaint. Defendants are directed to submit a certification of legal fees and costs associated with Plaintiffs' proposed Fourth Amended Complaint.

III. Conclusion

For the reasons stated, it is the finding of this Court that Defendants' application is **granted**. An appropriate Order accompanies this Opinion.

S/Dennis M. Cavanaugh
Dennis M. Cavanaugh U.S.D.J.

Date: July 10, 2006
Original: Clerk's Office
Cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXHIBIT D

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.	:	**Hon. Dennis M Cavanaugh**
Plaintiffs	:	ORDER
v.	:	Civil Action 02-CV-5948
COUNTY OF HUDSON, et al.,	:	(DMC)
Defendant	:	

This matter comes before the Court upon an Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis De Leonardis, Mark Morchel, and Michael Cifelli ("Defendants"), for this Court to stay the motions pending before the New Jersey Superior Court and hold Eileen Gilgallon, Ronald Gilgallon and Shawn Gilgallon ("Plaintiffs") in both criminal and civil contempt and civil confinement for violationg this Court's January 4, 2006 Order. Oral argument was heard regarding this matter on June 22, 2006, at 9:30 A.M. For the reasons stated in the Court's Opinion issued on this day,

IT IS on this 10th day of July, 2006,

ORDERED THAT Defendants' application to hold Plaintiffs in civil contempt is **granted;** and it is further

ORDERED that defendants' application to hold Plaintiffs in criminal contempt is **denied;** and it is further

ORDERED THAT Plaintiffs pay this Court a fine of $5000.00; and it is further

ORDERED THAT Defendants submit a certification of services for all counsel fees and costs, individually or severally, associated with Defendants' efforts in response to plaintiffs' Fourth Amended Complaint and a proposed Order;

ORDERED THAT Plaintiffs must reimburse Defendants all costs and fees associated with the Fourth Amended Complaint.

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: July 10, 2006
Original: Clerk's Office
Cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, ET AL., : **Hon. Dennis M.Cavanaugh**

Plaintiffs, : **OPINION** 19

V.

THE COUNTY OF HUDSON, et al., : Civil Action No.
(DMC) : 02-CV-5948

Defendants :

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon a motion by Eileen Gilgallon, Ronald Gilgallon, and Shawn Gilgallon ("Plaintiffs"), for reconsideration pursuant to Federal Rule of Civil Procedure 59(e). Plaintiffs seek reconsideration of this Court's January 4, 2006 Opinion and Order granting the application filed by the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, The Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, Silverio Vega, Maurice Fitzgibbons, William Braker, Nidia Da Vilacolon, William o'Dea, Albert Cifelli, Connell Foley LLP, John P. Lacey, Labor Management Cincepts Inc., John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does' (Defendants), enjoining plaintiffs from pursuing this matter in State Court. This motion is decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, Plaintiffs' motion for reconsideration is **denied.**

I. Background

The facts of this matter are described in detail in this Court's January 4, 2006 Opinion and in the interest of judicial economy the facts will not be restated in this Opinion. On January 13, 2006, Plaintiffs filed a motion for reconsideration and now request the Court to reconsider that which it previously decided.

II. Discussion

A. The Standard for Reconsideration

Under Rule 59 of the Federal Rules of Civil Procedure, a plaintiff must satisfy a high standard in order to have a judgment altered or amended. In North River Insurance Co. v. CIGNA Reinsurance Co., 52 F. 3d 1194, 1218 (3d Cir. 1995), the Court stated that a Rule 59 motion for an amended judgment must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence that was previously unavailable; or (3) the need to either correct a clear error of law or prevent a manifest injustice. A motion for reconsideration is regarded as "the functional equivalent of a Rule 59 motion... to alter or amend judgment". Venen v. Sweet, 758 F. 2d 117, 122 (3d Cir. 1985)

B. Local Rule 7.1

Although Rule 59 allows for a judgment to be altered, there is no express provision in the Federal Rules of Civil Procedure for a judicial decision to be reconsidered. United States v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999)

(Hedges, U.S.M.J.). However, in this District, Local Rule 7.1 (g) creates a specific procedure by which a party may, within 10 days of the entry of an order, ask either a District Judge, or a magistrate Judge, to take a second look at any decision "upon showing that dispositive factual matters or controlling decisions of law were overlooked by the Court in reaching its prior decision."
LITE, N.J. FEDERAL PRACTICE RULES, Comment 6 to L. Civ. R. 7.1 (g) (Gann 2002 ed.). Consequently, local Rule 7.1 (g) of the Local Rules of Civil Procedure, rather than Rule 59 of the Federal Rules of Civil Procedure, governs motions for reconsideration filed in the District of New Jersey. Compaction Sys. Corp., 88 F. Supp. 2d at 345.

Relief by way of a motion for reconsideration is an "extraordinary remedy" only be granted "very sparingly". NL Indus. Inc. v. Commercial Union Ins., Co., 935 F. Supp. 513, 516 (D.N.J. 1966); Maldonado v. Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986) (Brotman, U.S.D.J.). Local Rule 7.1 (g) does not contemplate a recapitulation of arguments previously considered by the Court in rendering its decision. Bermingham v. Sony Corp. of Am., Inc., 820 F. Supp. 834, 856 (D.N.J. 1992) (Lechner, U.S.D.J.), aff'd, 37 F.3d 1485 (3d Cir. 1994). Stated more simply, a motion for reconsideration is not an appeal. It is improper for a motion for reconsideration to "ask the Court to rethink what it ha[s] already thought through-rightly or wringly". Oritani Sav. & Loan Ass'n v. Fidelity & Deposit Co., 744 F. Supp. 1311, 1314 (D.N.J. 1990) (Ackerman U.S.D.J.). Rule 7.1(g) permits

reconsideration only when "disposable factual matters or controlling decisions of law" that were previously presented to the court were overlooked. Resorts Int'l v. Great Bay Hotel and Casino, 830 F. Supp. 826, 831 (D.N.J. 1992); Khair v. Campbell Soup, Co., 893 F. Supp 316, 337 (D.N.J. 1995) (Irenas, U.S.D.J.).

C. Plaintiff's Failure to Meet the Standard for Reconsideration

Here, the Plaintiffs' motion fails to show this Court "overlooked" any of the above listed points. Instead, Plaintiffs are improperly using a Rule 59 motion as a vehicle to reargue their claims. An argument is not deemed overlooked because it is not specifically addressed in a court's opinion. Eichorn v. AT&T Corp., No. Civ. A. 96-3587 (MLC), 1999 WL 33471890 (D.N.J. Aug. 23, 1999) (Cooper, U.S.D.J.). An argument may be regarded as having been considered if it is presented to the court in written submissions and in oral argument. Id.

Plaintiffs claim this Court erred in making the determination that Plaintiffs are permanently enjoined from pursuing any of their claims against Defendants arising from the denial of Plaintiffs' security guard contracts with the County of Hudson in the Superior Court of New Jersey. Specifically, Plaintiffs argue this Court erred because: (1) Plaintiffs' Third Amended Complaint had not yet been filed in the Superior Court of New Jersey; and (2) Plaintiffs claim for spoliation of evidence falls outside the re-litigation exception to the anti-injunction act. Both of Plaintiffs' arguments fail on reconsideration.

Plaintiffs' first argument that this matter was not ripe fails because Plaintiffs had filed a motion for leave to file the Third Amended Complaint. Applications to amend pleadings are granted liberally by courts. See Web v. Witt, 379 N.J. Super. 18, 24 (App. Div. 2005). Plaintiffs' act of seeking leave to amend their Third Complaint is their direct attempt to re-litigate that which has previously been decided not only by this Court, but by the Appellate Division of the New Jersey Superior Court, Magistrate Judge Hedges, District Judge Bassler, District Judge Hayden, and the Third Circuit. Plaintiffs have repeatedly wasted this Court's time and that of other Judges. They are now not allowed to further abuse the system in State Court. Finally, Plaintiffs' spoliation claim also fails to meet the above standard. Plaintiffs' Third Amended Complaint does not mention "spoliation" of evidence in regard to Civil action 02-5948, but does discuss it in connection to Mr. Maloney and the original Superior Court matter under HUD-L-4726-95. In this discussion it becomes clear that

Plaintiffs are not making a spoliation of evidence claim, but using this argument in another attempt to re-litigate their many allegations against the Defendants that have all been previously adjudicated. In addition, even if Plaintiffs did have a valid spoliation of evidence claim, New Jersey does not recognize a separate tort for the spoliation of evidence. See Jerista v. Murray, 185 N.J. 175, 201-02 (2005). For all of these reasons, Plaintiffs' motion for reconsideration must be dismissed.

EXHIBIT E

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.	**: Hon. Dennis M. Cavanaugh**
Plaintiffs	**: ORDER**
v.	: Civil Action No. 02- CV-5948
COUNTY OF HUDSON, et al.,	: (D.M.C.)
Defendants.	:

This matter coming before the Court upon a motion for reconsideration filed by Eileen Gilgallon, Ronald Gilgallon and Shawn Gilgallon's ("Plaintiffs"), pursuant to Federal Rule of Civil Procedure 59(e). This motion is decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth in the opinion issued today,

IT IS on this 23rd day of February, 2006,

ORDERED THAT Plaintiffs' motion for reconsideration is **denied.**

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: February 23, 2006

Original: Clerk's Office

Cc. The Honorable Mark Falk, U.S.M.J.

File

III. Conclusion

Plaintiffs have not met the high standard required to achieve success on a motion for reconsideration. For the reasons stated in this Opinion, Plaintiffs' motion for reconsideration is **denied.** An appropriate Order accompanies this Opinion.

S/Dennis M. Cavanaugh
Dennis M. Cavanaugh,

U.S.D.J.
Date: February 23, 2006
Original: Clerk's Office
Cc.: The Honorable Mark Falk, U.S.M.J.

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Filed 01/04/2006 Page 1 of 8
NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.,	:	**Hon. Dennis M.**
	:	**Cavanaugh**
Plaintiffs,	:	**OPINION**
v.	:	
COUNTY OF HUDSON, et al.,	:	Civil Action
	:	No.02-CV-5948
Defendants		(DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon an 26

Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis De Leonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carroll, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVilacolon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does("Defendants"), requesting this Court to enjoin Eileen, Ronald and Shawn Gilgallon's ("Plaintiffs") pending action in the Superior Court of New Jersey, Law Division, Hudson County Vicinage, docket number HUD-L-4228-03. Oral argument was heard regarding this matter on November 28, 2005. For the reasons set forth below, this Court **grants** Defendants' application enjoining Plaintiffs from pursuing this matter in State Court.

I. Background

The issue before this Court is related to a conflict that arose regarding the bidding in Hudson County for public contracts with security guard services in 1995 and 1996. (Defendants' Brief in Support of the Order to Show Cause ("Def. Br.") at 1). On or about July 1994, Defendant Hudson County issued a notice to bidders for a one year contract to provide security services at various facilities located within the County. (Id.) Plaintiffs had formed a corporation, Consec Security Services ("CSS"), that submitted the lowest bid. (Id.) Hudson County rejected this bid on the basis of "non-responsibility" after learning Mr. Ronald Gilgallon,

the former principal of CSS, was a convicted felon. (Id.) Plaintiffs then filed an Order to Show Cause in the Superior Court of New Jersey, Hudson County, Docket No. HUD-L-4228-03, seeking an injunction preventing Defendants from awarding the contract to another bidder. This was denied. (Id.) Since that time, Plaintiffs have filed various complaints and motions in both Federal and State Courts. This Court previously discussed the facts of this case in its earlier June 2, 2003 Opinion, wherein it was determined that the Appellate Division of New JerseySuperior Court, District Judge Bassler, Magistrate Judge Hedges, and District Judge Hayden had disposed of Plaintiffs' claims and entered sanctions against the Gilgallons for their vexatious filings and abuse of the judiciary pursuant to Rule 11 of the Federal Rules of Civil Procedure. (See, Hon. Dennis M. Cavanaugh's Order and Opinion dated June 2, 2003). Plaintiffs appealed this decision and the Third Circuit affirmed my decision on April 14, 2004. In an effort to avoid unnecessarily expending this Court's judicial resources, and in the interest of judicial efficiency and economy, this Court will not recite the facts that occurred prior to the June 2, 2003 Opinion.

Plaintiffs continued to litigate this matter despite this Court's ruling. Plaintiffs filed a second action in the Superior Court of New Jersey, Law Division, Hudson County, on August 1, 2003, alleging their former counsel committed mal practice regarding their first formal complaint, (See, complaint date 8/1/03). On May 26, 2004, Plaintiffs filed a second amended complaint naming

Hudson County Attorney Michael Dermody, who had been opposing counsel in the first Federal Action, as a Defendant, alleging he conspired with their former counsel to deprive Plaintiffs of their ability to litigate their Federal Claims. (See, Second Amended Complaint dated May 26, 2005). Judge Bassler found it necessary to enter an injunction against Plaintiffs from pursuing this matter against Defendant Dermody in State Court in order to protect and effectuate the District Court's Judgment in the First Federal Court Action. Judge Bassler also prohibited Plaintiffs from filing any future complaints against Mr. Dermody in any State or Federal Court for claims arising out of the Hudson County's Decision to award the securities contract to Labor Management Concepts ("LMC"). Plaintiffs appealed Judge Bassler's decision and the Third Circuit affirmed his decision on November 3, 2005.

Plaintiffs then filed a third Amended Complaint in the Superior Court of New Jersey on October 17, 2005. The Complaint names Plaintiffss counsel R.C. Shea & Associates, Shea and Novy P.C., Robert Shea, Stacie Brustman, the County of Hudson, and Darren Maloney as Defendants. Plaintiffs did not name the various members of LMC and the Board of Chosen Freeholders, Robert Janiszewski, Francis DeLeonardis ,Mark Morchel, Michael Cifelli, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila Colon, Albert Cifelli, Silverio Vega, and Maurice Fitzgibbons as Defendants. However, all of these Defendants now seek an injunction against Plaintiffs enjoining them from proceeding against

them any further in State Court.

I. DISCUSSION

A. Standard

The Anti-Injunction Act("Act") provides "a court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments". 28 U.S.C.A. &2283. The Act "is an absolute prohibition against enjoining state court proceedings,unless the injunction falls within one of three specifically defined exceptions". Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 286, (1970). Consequently, "any injunction against State Court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to & 2283, if it is to be upheld". Id. At 287. Pursuant to 28 U.S.C.A & 2283, a District Court may only grant an injunction to stay State Court proceedings if (1) expressly authorized by an Act of Congress; (2) where it is necessary to aid its jurisdiction; and (3) to protect or effectuate its judgments. These "exceptions are narrow and are not to be enlarged by loose statutory construction". Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146, (1988).

The third exception is known as the "relitigation exception". National R.R. Passenger Corp. v. Pa. R.R. Pub. Util. Comm'n, 342 F.3d 242, 255 (3d Cir. 2003). The relitigation exception was designed to allow Federal Courts to prevent State Courts from

deciding an issue previously litigated in Federal Court. Chick Kam Choo, 486 U.S. at 147. This exception is " founded in the well recognized concepts of res judicata and collateral estoppel". Id; In re Prudential Ins. Co. Sales Practice Litig.: Lowe, 261F.3d 355, 364 (3d Cir. 2001). The relitigation exception may only be used when the Federal injunction pertains to an issue already litigated and decided in Federal Court. Id. At 148.

B. The Relitigation Exception in Regard to Named Defendants

The relitigation applies in this matter to Defendants Maloney and Hudson County. Plaintiffs have now filed a Third Amended Complaint in the Superior Court of New Jersey against their attorneys, the County of Hudson, and Darren Maloney. Plaintiffs allege their attorneys committed malpractice durinf the early stages of this litigation. (See, Plaintiffs Third Amended Complaint). Plaintiffs claim the relitigation exception does not apply to defendants Maloney and Hudson County because the joining of these parties is necessary to prove their "suit within a suit" in relation to their attorney malpractice claims. (Plaintiffs' Letter Brief in Oppositiin to Defendants' Order to Show Cause received December 7, 2005 ("Pl. Br.") at 3).

Plaintiffs "suit within a suit" argument does not apply to Defendants' Maloney and Hudson County. Although attorney malpractice claims are generally exempt from the entire controversy doctrine, proving a "suit within a suit" does not allow a plaintiff to re-name a defendant already dismissed

from the underlying action. Connell Foley v. Israel Travel, 377 N.J. Super. 350 (App. Div. 2005). Plaintiffs' Third Amended Complaint does more than establish a case for malpractice, it restates prior claims against Defendants Maloney and Hudson County previously decided by this Court. Among other things, it again raises the issues of of the alleged ultra vires payments made by the County to Labor Management Concepts ("LMC"). (Plaintiffs Third Amended Complaint at 41). This allegation was previously dismissed by this Court and the relitigation exception prevents Plaintiffs from pursuing it again in State Court.

Furthermore, Plaintiffs ask the Superior Court to award them damages "resulting from the dismissal of their claims in civil action 00-591 and 02-5948," and to award damages for "any and all damages that may have resulted from the prior litigations in civil action 00-591 and 02-5948," and damages for "punitive, compensatory and nominal damages, interes, related costs and personal financial loss relating to this case." (Plaintiffs' Third Amended Complaint at 75). Plaintiffs could have received this relief if this Court had not previously dismissed their claims. Under the relitigation exception Plaintiffs are free to argue malpractice claims against their attorneys, but they may not reargue claims and request damages already denied by this Court and other District Courts. For these reasons, the relitigation exception applies to Plaintiffs' claims against Defendants Maloney and Hudson County. Therefore, this Court grants Defendants' application and issues an injunction enjoining

Plaintiffs' pending action against Defendants Maloney and Hudson County in New Jersey State Court.

C.The Relitigation Exception and Unnamed Defendants in Plaintiffs Third Amended Complaint.

Defendants also seek an injunction enjoining Plaintiffs from pursuing this matter in State Court against Defendants Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Folc LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does'("Defendants"), which were not named on the face of Plaintiffs Third Amended Complaint. Although it may first appear premature for this Court to grant an injunction enjoining Plaintiffs from pursuing an action against Defendants that are not named in their complaint, these Defendants are named and referred to throughout the body of the Complaint.

The Board of Freeholders and LMC is mentioned throughout the Plaintiffs Complaint. (See, Plaintiffs Third Amended Complaint). For example, on page thirty-three of Plaintiffs' Complaint it states "Robert Janiszewski and the County were well aware that a settlement between LMC and the County was never executed." On page thirty-six of the Complaint Plaintiffs again reference the alleged

"embezzlement scheme" between the County of Hudson and LMC. Plaintiffs repeatedly mention (1) alleged corruption and collusion of County officials leading to ultra-viries payments to LMC; (2) alleged conspiracy by County officials to settle Hudson County's claims against LMC through illegal actions; (3) that the settlement between LMC and Hudson County is invalid; and the Defendants committed fraud Court during the litigation of their prior Federal Complaint before this Court. Judges of this Court have already addressed and dismissed all of these claims against all of the parties. Therefore the relitigation exception applies to plaintiffs' current state action against the above named Defendants.

This Court refuses to place form over substance and allow Plaintiffs to raise issues against Defendants in State Court that were already decided in Federal Court, simply because Plaintiffs did not name all of the Defendants in their Complaint. For these reasons, this Court grants Defendants' application and issues an injunction enjoining Plaintiffs from pursuing this matter against any of the parties named in the Order to Show Cause in State Court or any other Court.

II. CONCLUSION

For the reasons stated, it is the finding of this Court that Defendants' application is **granted.** An appropriate Order accompanies this Opinion.

S/Dennis M Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Date: January 4, 2006
Original: Clerk's Office
Cc. All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXHIBIT F

Case 2:02-cv-05948-DMC Document 94
Filed 01/04/2006
NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al., : Hon. Dennis M.

Plaintiffs : Cavanaugh
: ORDER

v.

COUNTY OF HUDSON et al., : Civil Action No.

02-CV-5948

Defendant :(DMC)

This matter coming before the Court upon an Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Inc., John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does ("Defendants"), requesting this Court to

enjoin Eileen, Ronald and Shawn Gilgallon's ("Plaintiffs") pending action in the Superior Court of New Jersey, Law Division, Hudson County Vicinage, Docket No. HUD-L-4228-03. Oral argument was heard regarding this matter on November 28, 2005. For the reasons set forth in the Opinion issued today,

IT IS on this fourth day of January 2006,

ORDERED that Defendants' application is **granted;**

IT IS FURTHER ORDERED that an injunction is issued enjoining plaintiffs from pursuing this matter against any of the above named Defendants in State Court or any other Court.

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: January 4, 2006
Original: Clerk's Office
Cc. All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXF

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EILEEN GILGALLON, RONALD GILGALLON And MARY HENNIG, as taxpayers in Hudson County, New Jersey Plaintiffs	00-CV-591 (WGB)

v.

BOARD OF CHOSEN FREEHOLDERS FOR COUNTY OF HUDSON; NEIL CARROL; VINCENT ASCOLESE; NEPTALIA CRUZ WILLIAM BRAKER; NIDIA DAVILA-COLON; WILLIAM O'DEA; ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; EDWARD G. FLORIO LMC, INC; & ABC CORPORATIONS AND JOHN AND MARY DOES 1-10 (fictitious persons)

Defendants

OPINION

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BASSLER, DISTRICT JUDGE:

Defendants Labor management Concepts, Inc. ("LMC") and Defendants Board of Chosen Freeholders for the County of Hudson, ("Board"), Neil Carrol, Vincent Ascolese, Neptalia Croz, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, and Edward J. Florio (collectively "Defendants"), move to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b) (6). Defendants' motion to dismiss is **granted.**

LMC also seeks sanctions against Plaintiffs pursuant to Fed. R. Civ. P. 11. Rule 11 requires that a motion for sanctions be made separately from other motions or requests. Because LMC has not made a separate application for sanctions, that request is **denied without prejudice.**

Because Plaintiffs complaint alleges, among other

things, a violation of the **Racketeer Influence** and Corrupt Organizations Act ("RICO"), 18 U.S.C. & 1964, the Court has jurisdiction over this matter pursuant to 28 U.S.C. & 1331.

I. BACKGROUND

A. State Court Proceedings

Plaintiff Eileen Gilgallon ("Eileen") is the President and ownerof CFS Services, Inc. ("CFS"), a licensed private detective agency. She is married to Plaintiff Ronald Gilgallon ("Ronald").

In 1995 and in 1996, several companies, including CFS and LMC, submitted bids to Hudson County ("the County") to provide security services at many of Hudson County's public buildings, including the County Prosecutor's Office and Meadowview Hospital. LMC contends that due to the sensitive nature of the work and the contents of those buildings, the winning bidder needed to have moral integrity. CFS was the lowest bidder; however, CFS was disqualified by the County based on its suspected ties to Ronald, who had been convicted of insurance fraud. Thereafter, LMC was deemed the lowest responsible bidder in both 1995 and 1996.

CFS denied that it had any connection to Ronald and sued the County and LMC in State Court, CFS Services, Inc. v. Board of Chosen Freeholders and Labor Management Concepts, Inc., HUD Law Docket No. 4726-95, seeking to obtain the bids. The County filed a cross-claim against LMC to recover the cost of unauthorized telephone charges that were incurred at a location where LMC provided security services.

On December 22, 1997, at a regular meeting of the Board of Chosen Freeholders, the Board passed a Resolution authorizing Hudson County's Counsel to accept
$30,000 from LMC to settle "any and all cross-claims" between the Hudson County Board of Chosen Freeholders and LMC, "including the cost of the unauthorized telephone calls". (Board Resolution attached to LMC's Mot. To Dismiss theComplaint ("LMC's Mot.") as Ex F. (emphasis added).

Pursuant to the Board's Resolution, on December 26, 1997, the County and LMC entered into a Settlement Agreement and Release ("Settlement Agreement") that resolved all claims between them. (Settlement Agreement attached to LMC's Mot. As Ex. A.) The parties also executed a Stipulation of Dismissal With Prejudice. (Ex. A. attached to LMC's Mot.)

As for the suit between CFS and LMC, the Law Division Judge ordered that the County conduct a hearing to determine whether CFS was a responsible bidder and therefore eligible to bid on the 1995 and 1996 contracts. After ten days of testimony, the hearing officer issued his findings and his recommendation to the Board; the hearing officer found that CFS was not a responsible bidder for either the 1995 or 1996 contract because of Ronald's continued involvement with CFS. Subsequently, the Board adopted the hearing officer's findings and retroactively awarded both the 1995 and 1996 contracts to LMC.

After reviewing the transcripts of the

responsibility hearing, the Law Division upheld the County's decision. Further, the Court denied CFS's motion to amend its complaint to allow Plaintiff or a taxpayer of Hudson County to sue LMC to recover on behalf of the County money allegedly owed as a result of unauthorized telephone charges and alleged supervisory personnel overpayments. (See CFS Services, Inc. v. The Board of Chosen Freeholders of the County of Hudson and Labor Management Concepts, Inc., A-2646-97T5 (App. Div. May 20, 1999) at 6, attached to LMC's Mot. As Ex. B.)

The New Jersey Appellate Division affirmed the lower court and agreed that there was sufficient credible evidence in the record to support the finding that CFS was not a responsible bidder. The appellate court also affirmed the validity of the Settlement Agreement and held that the trial court did not err in denying leave to amend the complaint "to assert taxpayer claims through Eileen Gilgallon against LMC for excessive managerial and telephone costs under other contracts with the County of Hudson." (Id. At 9.)

B. Federal Court Proceeding

On February 4, 2000, Plaintiffs filed an eight count Complaint before this Court alleging that LMC intentionally violated its contract with the County by: (1) using the County telephones without authorization; (2) failing to provide staff required under the contract and improperly submitting requests for payment when the required staff were not on site; and (3) being paid ultra vires without an appropriately executed contract for services rendered beginning in July 1995 to date.

Defendants move to dismiss the Complaint contending that because the County settled all claims that it had against LMC, Plaintiffs are precluded from raising anew those issues that were the subject of the Settlement Agreement. Additionally, Defendants maintain that Plaintiffs do not have legal standing to bring a taxpayer suit on behalf of the County. Finally, Defendants seek dismissal of this suit on the grounds that certain of the criminal statutes cited by Plaintiffs in their Complaint do not provide for a cause of action for a civil remedy and that the RICO allegation has not been pled with the requisite particularly.

II. Discussion

A. Standard for Motion to Dismiss

Federal Rule of Civil Procedure 12(b) (6) allows a party to move for a dismissal based upon the pleader's "failure to state a claim upon which relief can be granted". Since the long-established federal policy of civil litigation is to decide cases on the proofs, district courts generally disfavor Rule 12(b) (6) motions. Melo-Sonics Corp. v. Cropp, 342 F. 2d 856 (3d Cir. 1965); Panek v. Boqucz, 718 F. Supp. 1228, 1229 (D.N.J. 1989).In deciding a motion to dismiss for failure to state a claim, all allegations in the pleadings must be accepted as true and the plaintiff must be given the benefit of every favorable inference that can be drawn from those allegations. See, Conley v. Gibson, 355 U.S. 41, 48 (1957); Wisniewski v. Johns-Manville Corp., 812 F. 2d 81, 83 n. 1 (3d Cir. 1987); Markowitz, 906 F. 2d at 103. "All the rules require is a short and plain

statement of the claim that gives the defendant fair notice of the plaintiff's claim and the grounds upon which it rests." Conley, 355 U.S. at 47.

Rule 12(b) (6) does not countenance "dismissals based on a judge's disbelief of a complaint's factual allegations". Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheur v. Rhodes, 416 U.S. 232, 236 (1974).

Accepting the facts in the pleadings as true and giving them all reasonable inferences, a court must dismiss under 12(b)(6) "[i]f as a matter of law it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Neitzke, 490 U.S. at 327-27.

B. Settlement Agreement

Defendants argue that because Hudson County settled all its claims that it had brought or could have brought against LMC for $30,000.00, Plaintiffs cannot seek to step into the County's shoes and undo the very Settlement Agreement and Release and Stipulation of Dismissal With Prejudice that the County itself entered into. In response, Plaintiffs suggested that the Stipulation of Dismissal was fraudulent because the three existing Stipulations exhibit different filing dates. Defendants contend, however, that the original Stipulation of Dismissal was filed on December 26, 1997, as indicated on one of the copies of the Stipulation. Ex. O attached to Pl's Brief in Opp'n to Def's Notice of Mot. To Dismiss ("Pl.'s Opp'n Br."). Another copy has December 26, 1999

stamped on it. Ex. M attached to Pl.'s Opp'n Br. It appears that the last numeral "9" may mistakenly have been manually altered, possibly when the document was copied. The final copy of the Stipulation does not evidence a legible date stamp. Ex. N attached to Pl.'s Opp'n Br. Plaintiffs' theory of fraud on this basis is meritless

Next, Plaintiffs claim that the Settlement Agreement covers more than the scope of the discussion by the Board at its December 22, 1997 meeting. In other words, Plaintiffs believe that the Board had not been presented with, and was unaware of facts pertaining to the allegations of bill padding and ultra vires payments, and therefore, the Board had only agreed to settle the then existing cross-claim, that is, the limited issue of LMC's unauthorized use of County telephones.

Plaintiffs' contention is without merit. According to the express terms of the Settlement Agreement, the Board intended to, and did in fact, release the then existing claims as well as claims that could have been brought against LMC. The Settlement Agreement expressly states that the County has conducted an extensive investigation of CFS's allegations against LMC:

(b) [t]hat [LMC] had not been fully authorized by Freeholder Resolution to perform security Guard services during the period July 1995 through
The present and was thus not entitled to payment
during that period;

(c) [t]hat [LMC] had applied for, and obtained, payments for more security guard service that had

actually been worked.

Settlement Agreement, at II 2. Other than evidence that telephone calls had been made from Meadowview Hospital and charged to the County, the County found no evidence of any wrongdoing by LMC. Id. T II 3.

Moreover, the Settlement Agreement reflects the parties' desire to "settle this matter once and for all". (Id. At II 5.) It states that LMC agrees to pay, and Hudson County agrees to accept, $30,000.00 "in full and final settlement of all claims and counterclaims that Hudson County has filed, or could have filed against Labor Management Concepts, Inc. based on conduct that occurred prior to the date of this Settlement Agreement." (Id. (emphasis added)). More specifically, the Agreement provides that the County agrees to release LMC "from any and all other claims that the County might have against Labor Management Concepts, Inc. arising out of security guard services provided by Labor Management Concepts, Inc. during the period January 1, 1994 through the present." (Id. At II 7 (emphasis added)).

The Settlement Agreement was determined to be valid by the New Jersey Appellate Division. In affirming the decision of the lower court not to permit Plaintiffs to amend their complaint, the appeals court noted:

A taxpayer action against a local government is

appropriate when there are claims of fraud or corruption, illegal bidding procedures or other instances of illegalities and ultra vires acts, including:

Ultra vires expenditures. Loigman v. Township Comm. Of Middletown, 297 N.J. Super. 287, 295-96 (App. Div. 1997).

In this instance the County did pursue claims against LMC similar to those sought to be asserted by Eileen Gilgallon as taxpayer and entered into a settlement providing for payment of LMC in the amount of $30,000.00. A local government acting lawfully and in good faith may compromise, adjust and settle claims against it in the same manner as a natural person, and the resulting settlement will have conclusive effect on other parties. Edelstein v. City of Asbury Park, 51 N.J. Super. 368, 389-90 (App. Div. 1958). We concur with the conclusion of [the Law Division judge] that plaintiff did not show that the County acted illegally or beyond its authority in agreeing to settle matters with LMC and that there was no substantial reason presented to undermine the presumption of the validity of the settlement.

CFS Services, Inc., A-2646-97T5, at 9.

Further, as evidenced by the discussion that occurred at the December 22, 1997 Board meeting, the County clearly had knowledge of, and had considered not only the allegation of unauthorized telephone calls, but also these other claims against LMC that Plaintiffs now raise. At the meeting, Eileen and her son Shawn, advised the Board of their suspicions that LMC had stolen over $250,000 from the

County. See Board meeting notes, attached to LMC's Mot. As Ex. E. They also spoke to the Board of LMC's "illegal bidding," and "criminal theft, collusion, conspiracy." Id. Consequently, Eileen and her son questioned why, in the face of such wrongdoing, the Board would consider settling the County's claims against LMC for only $30,000. (Id.). Despite such accusations of LMC, the Board passed the Resolution authorizing settlement of "any and all
cross-claims" between the Hudson County Board of Chosen Freeholders and LMC, including the cost of the unauthorized telephone bills." Board Resolution attached to LMC's Mot. As EX. F. (emphasis added). Accepting the facts in the pleadings as true and giving them all reasonable inferences, because the County settled and released all claims it had brought or could have brought against LMC, Plaintiffs are precluded from pursuing those claims as taxpayers on behalf of the County. Accordingly, the Court need not address Defendants' alternate grounds for dismissal.

III CONCLUSION

For the reasons noted above, Defendants' motion to dismiss is **granted.** Plaintiffs' Complaint is **dismissed.**

William G. Bassler,

U.S.D.J.

Dated: January 31, 2001

EXHIBIT G

Case 2:00-cv-00591-WGB Document 146
Filed 208/2005

EILEEN GILGALLON, et al., Plaintiffs,		Civ. No. 00-591 (WGB)
		ORDER
BOARD OF CHOSEN FREEHOLDERS FOR THE COUNTY OF HUDSON, et, al., Defendants.		

This matter having come before the Court on the motion of MICHAEL L. DERMODY ("Dermody") for a permanent injunction pursuant to 28 U.S.C. & 2283 (the "Anti-Injunction Act") prohibiting Eileen Gilgallon, Ronald Gilgallon, and Mary Hennig ("Plaintiffs") from pursuing further proceedings against him in New Jersey Superior Court under docket number HUD-L-4228-03; and for sanctions pursuant to Fed. R. Civ. P. 11; and

The Court having considered the submissions of the parties;

And

The Court having heard oral argument on January 24, 2005; and

For the reasons set fort in the Opinion issued this day;

And For good cause shown;

It is this 7th day of February 2005 ORDERED that Dermody's motion for a permanent injunction is hereby **granted.** Plaintiffs Ronald Gilgallon, Eileen Gilgallon, Mary Hennig and their agents are enjoined and restrained from prosecuting the action against Michael Dermody under docket number HUD-L 4228-03 in New Jersey State Court. In addition, Plaintiffs and their agents may not file a future complaint against Michael Dermody in any state or federal court for claims arising out of Hudson County's awarding of securities services contracts to LMC or out of the litigation concerning those contracts unless prior written approval is granted by this Court.

Dermody's motion for Rule 11 sanctions is **denied.**

/s/ WILLIAM G. BASSLER
United States District Judge

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(3)

No. 07-1018

FILED

MAR 10 2008

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

RONALD GILGALLON, EILEEN GILGALLON
SHAWN GILGALLON,

Petitioners,

v.

THE COUNTY OF HUDSON, ROBERT JANISZEWSKI, FRANCIS DELEONARDIS, MARK MORCHEL, MICHAEL CIFELLI, THE BOARD OF CHOSEN FREEHOLDERS, NEIL CARROL, VINCENT ASCOLESE, NEPTALIA CRUZ, WILLIAM BRAKER, NIDIA DAVILA-COLON, WILLIAM O'DEA, ALBERT CIFELLI, SILVERIO BEGA, MAURICE FITZGIBBONS, CONNELL FOLEY LLP, JOHN P. LACEY, LABOR MANAGEMENT CONCEPTS, INC., JOHN MONROE, STATE OF NEW JERSEY, JOSEPH TRAPP, and ABC CORPORATIONS 1-10 (a fictitious corporation) and JOHN and MARY DOES 1-10 (fictitious persons),

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the District Court properly entered a permanent injunction under the re-litigation exception to the Anti-Injunction Act where Petitioners have repeated the same allegations against Respondents previously dismissed in various forms over the past 12 years of litigation.
2. Whether the District Court made proper findings pursuant to Fed. R. Civ. P. 52 based upon the vast procedural record it had before it.
3. Whether the permanent injunction violated Petitioners' Due Process rights where the injunction was properly made to stop re-litigation of the Court's prior judgment.

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COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

The lengthy and tortuous procedural history of this matter has been thoroughly examined by multiple courts of the United States District Court for the District of New Jersey. Petitioners' application is woefully inadequate in presenting the factual and procedural history in this matter. Because the Petition appeals a permanent injunction that was based upon prior court filings by Petitioners, a thorough review of the procedural history is necessary to determine whether the injunction was warranted. Accordingly, rather than recite the entire twelve plus year history of this matter herein, and because the lower court relied upon the numerous opinions generated by Petitioners' filings, the Respondents will rely upon the opinions of the Honorable William G. Bassler, U.S.D.J., dated February 8, 2005 (Resp. App. 1 to App. 44), the Honorable Dennis M. Cavanaugh, U.S.D.J., dated June 2, 2003 (Resp. App. 45 to App. 83) and January 4, 2006 (Pet. App. 25 to App. 36) that comprehensively examine the causes of action repeatedly being brought by Petitioners against the Respondents. Accordingly, the Respondents will rely upon the factual and procedural history as cited therein and in the multitude of State Court and Federal Court opinions.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE PETITION SHOULD BE DENIED AS THE RE-LITIGATION AND PROTECTION OF JUDGMENT EXCEPTIONS WITHIN THE ANTI-INJUNCTION ACT WERE PROPERLY APPLIED TO THE INSTANT MATTER.

Petitioners' claim that the January 4, 2006, Order violates the Anti-Injunction Act. However, a review of the record, as conducted by the lower courts, reveals that the Order was squarely within the exceptions of the Anti-Injunction Act. The Anti-Injunction Act was created to minimize the friction between State and Federal Courts. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146, 108 S.Ct. 1684, 1689, 100 L.Ed.2d 127, 135 (1988).

Although called the "Anti-Injunction Act," it has been recognized that Federal Courts have the authority to issue injunctions preventing State Court proceedings under certain circumstances. Specifically, under 28 *U.S.C.A.* § 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

A judgment is to be "protected" from action which would frustrate it and is to be "effectuated" by an

injunction when further action in a State Court would mean re-litigation of cases and controversies which have been fully adjudicated. *Commerce Oil Refining v. Miner*, 303 F.2d 125, 127 (1st Cir. 1962). Where re-litigation in a State Court would result in nullifying the judgment or decree of the United States court, a stay is appropriate. *U.S. v. Ford Motor Co.*, 522 F.2d 962 (6th Cir. 1975); *So. Central Bell Tel. Co. v. Constant Inc.*, 304 F.Supp. 732 (D.C.La. 1969), *aff'd*, 437 F.2d 1207; *Berman v. Denver Tramway*, 197 F.2d 946, 949 (10th Cir. 1952).

It is recognized that a court may and, in a proper case, *must* restrain persons from prosecuting actions in other proceedings. *Baltimore and O.R. Co. v. Kepner*, 314 U.S. 44, 62 S.Ct. 6, 86 L.Ed. 28 (1941); *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145, 52 S.Ct. 571, 76 L.Ed. 1026 (1932); *Moran v. Sturches*, 154 U.S. 256, 14 S.Ct. 1019, 38 L.Ed. 981 (1894); *Philip v. Mackrev*, 261 F.2d 945 (9th Cir. 1958). A court with authority to enforce an injunction is not justified in turning its suitors over to another tribunal to obtain justice. *Bd. of Commissioners v. Aspinwall*, 65 U.S. 376, 16 L.Ed. 735 (1860); *see also*, *Kelly v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 985 F.2d 1067 (11th Cir. 1993), *cert. den'd*, 510 U.S. 1011, 114 S.Ct. 600, 126 L.Ed.2d 565 (Anti-Injunction Act merely carves out exception to Federal Courts' broad injunctive powers, rather than authorizing an exclusion of class of injunctions.); *U.S. Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. den'd*, 493 U.S. 1074, 110

S.Ct. 1121, 107 L.Ed.2d 1028. (Anti-Injunction Act applies when court of United States grants injunction to stay proceedings of State Court.).

Further, a two-prong analysis has been employed by our courts in determining whether to issue an injunction under 28 *U.S.C.A.* § 2283:

> First, it must be determined whether the action falls within ambit of the Anti-Injunction Act. If it does, then an injunction cannot be issued regardless of the facts of the underlying case;
>
> Second, if the Anti-Injunction Act is not applicable, [the court] must then consider the merits of the injunction request itself.

Bonser v. State of N.J., 605 F.Supp. 1227, 1229-30 (D.N.J. 1985); *citing Mitchum v. Foster*, 407 U.S. 225, 243, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); *and Vendo Co. v. Lektro-Vend, Corp.*, 433 U.S. 623, 645 n. 1, 97 S.Ct. 2881, 2895 n. 1, 53 L.Ed.2d 1009 (1977) (Stevens, J. dissenting) (providing a clear statement of relevant factors). As determined below, the permanent injunction against Petitioners was necessary both to protect prior Federal Court judgments and to avoid re-litigation of claims previously raised and dismissed.

A. The Injunction Against Petitioners Was Necessary To Protect Prior Judgments Of The Federal Court.

As found by the District Court, Petitioners' State Court Complaints did not fall within the protection of the Anti-Injunction Act. (Pet. App. 18 to App. 36) By attempting to re-litigate the same allegations against the Respondents in State Court, the injunction was necessary to protect the Federal Court judgments and orders. It has long been recognized that injunctions issued to protect federal judgments fall outside the protections in the Anti-Injunction Act. *See Huguley v. General Motors Corp.*, 999 F.2d 142 (6th Cir. 1993) (While this section generally precludes Federal Courts from interfering with State Court proceedings, there is an exception to protect or effectuate prior Federal Court judgments.); *Southwest Airlines Co. v. Texas Intern. Airlines, Inc.*, 546 F.2d 84 (5th Cir. 1977) (Congress, by specifically exempting from the ban of this section all injunctions "to protect or effectuate * * * judgments" of the federal judiciary, has recognized that the states, as well as the federal government, have a responsibility to maintain the harmonious relations necessary to the functioning of our federal system.); *Commerce Oil Refining Corp. v. Miner, supra*, 303 F.2d at 128 (Effectuation, within this section, must relate to final judgments.); *and Northwest Airlines, Inc. v. Astraea Aviation Services, Inc.*, 930 F.Supp. 1317 (D.Minn.1996), *aff'd*, 111 F.3d 1386 (Anti-Injunction Act only gives Federal Court power to enjoin state proceeding in order to protect or

effectuate its judgments.). As such, the Respondents have met the first prong of the two-step analysis in *Bonser, supra,* 605 F.Supp. at 1229-1230.

The granting of an injunction barring current State Court proceedings is especially appropriate where the continuing re-litigation is vexatious. *See generally Scott v. Hunt Oil Co.*, 398 F.2d 810 (5th Cir. 1968) (District Court Judge, in order to relieve parties of harassing and vexing litigation, has power to enjoin party from filing suits in State Courts so that court may protect or effectuate its judgments.); *Sperry Rand Corp. v. Rothlein*, 288 F.2d 245 (2d Cir. 1961) (When Federal Court believes that another suit is being brought to undermine decision already made by court, injunction is proper.); *Browning Debenture Holders Committee v. DASA Corp.*, 454 F.Supp. 88 (S.D.N.Y. 1978), *aff'd,* 605 F.2d 35. (One of the traditional exceptions read into this section applies to cases in which State Court proceedings sought to be enjoined are baseless and vexatious.); *and Chrysler Corp. v. E.L. Jones Dodae, Inc.*, 421 F.Supp. 969 (W.D.Pa. 1976) (Exception embodied in phrase "to protect or effectuate its judgments," within provision of this section operates to save a successful litigant from being subjected to a vexatious court litigation through collateral attacks on matters previously determined in the Federal Courts.).

Here, the claims being raised by Petitioners in their State Court actions were especially vexatious because the United States District Courts, as well as the Third Circuit Court of Appeals previously

observed and determined that Petitioners' filings were abusive and frivolous. Indeed, Petitioners have been sanctioned several times for their vexatious filings.

As Judge Bassler noted when granting a permanent injunction against Petitioners, "[Petitioners] have proven adroit and persistent in their efforts to avoid the consequences of a judgment against them." (Resp. App. 42) Proving Judge Bassler correct, Petitioners attempted to avoid the February 8, 2005 injunction by filing a Third Amended Complaint in State Court, raising issues and naming defendants previously dismissed by Judge Cavanaugh in 02-5948 (DMC). This maneuver forced the Respondents to seek relief, again in the form of an injunction, with Judge Cavanaugh. In turn, as Judge Cavanaugh found, it was necessary to extend this injunction not just to the parties named in the Third Amended Complaint but to all of the Respondents because Petitioners had repeatedly tried to skirt the restraints by seeking the same relief against different parties. As demonstrated time and again, Petitioners' claims had no merit and the finality of the judgments against them must be protected. This places the injunction issued by Judge Cavanaugh firmly within the scope of the protection of judgments exception to the Anti-Injunction Act. Accordingly, the Petition for Certiorari should be denied.

B. Where An Issue Is Necessarily Determined By A Federal Court, An Injunction Is Appropriate To Avoid Relitigation.

In *Chick Kam Choo*, *supra*, 486 U.S. at 147, this Court held that an injunction of a State Court action is appropriate where the State Court would be relitigating an issue that was necessarily determined in a prior federal proceeding. In *Chick Kam Choo*, the petitioner brought a wrongful death action in the District Court for the Southern District of Texas arising out of a death that occurred in Singapore. The District Court dismissed the matter under the doctrine of *forum non conveniens*, provided that Defendants submit to the jurisdiction of the Singapore courts. *Id.* at 145. In addition, the District Court held that Singapore law would apply to the controversy. *Id.*

Instead of bringing the action in Singapore, Defendants brought an action in the State Courts of Texas. *Id.* The State Court Complaint contained all of the same allegations as were in the Complaint in the prior federal action. *Id.* Defendants alleged that the law of the State of Texas would apply. *Id.* at 149.

Defendants moved before the District Court for an injunction of the State Court action based upon the District Court's ruling dismissing the matter for *forum non conveniens* and sought an injunction of the state law claim based upon the court's determination

that Singapore law applied. *Id.* The District Court issued the injunction. *Id.*

The United States Supreme Court upheld the permanent injunction in part and reversed in part. *Id.* at 151. With regard to the issue of whether Texas was an appropriate forum for the action, the Supreme Court reversed. *Id.* The Court noted that:

> [T]he only issue decided by the District Court was that petitioner's claims should be dismissed under the federal *forum non conveniens* doctrine. Federal *forum non conveniens* principles simply cannot determine whether Texas courts, which operate under a broad "open courts" mandate, would consider themselves an appropriate forum for petitioner's lawsuit . . . Moreover, the Court of Appeals expressly recognized that the Texas Courts would apply a significantly different *forum non conveniens* analysis. Thus, whether the Texas state courts are an appropriate forum for petitioner's Singapore law claims has not yet been litigated, and an injunction to foreclose consideration of that issue is not within the re-litigation exception. (Citations omitted) *Id.* at 147.

However, with regard to the question of whether Texas law or Singapore law applied to petitioner's claim, the Court *upheld* the injunction. *Id.* at 1691. Petitioner again argued that this issue was not "actually litigated" during the initial federal action. *Id.* The Court, however held that:

> Because in its 1980 decision the District Court decided that Singapore law must control petitioner's lawsuit, *a decision that necessarily precludes the application of Texas law*, an injunction preventing relitigation of that issue is within the scope of the relitigation exception of the Anti-Injunction Act. (Emphasis supplied) *Id.* at 150-151.

Thus, the rule of *Chick Kam Choo* is that where an order or judgment of a Federal Court *necessarily determines* an issue, the re-litigation exception applies. This is the case even if that issue was neither argued before the Court nor expressly addressed in the Federal Court's ruling.

Here, the lower courts determined that a permanent injunction was necessary in this matter to avoid the re-litigation of the allegations against the Respondents. The lower court specifically found that Petitioners' allegations in the State Court Complaint were re-packaged allegations previously dismissed. (Pet. App. 31 to App. 34)

C. The Lower Court Did Not Abuse Its Discretion In Issuing The Injunction.

The appropriate standard of review for a district court's authority to issue an injunction under the Anti-Injunction Act is *de novo*. *In re Diet Drugs*, 369 F.3d 293, 304 (3d Cir. 2004); *citing In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 363 (3d Cir. 2001). The injunction is reviewed for abuse of

discretion: the legal issues are reviewed *de novo* and the factual issues are reviewed for clear error. *Id.*

A court abuses its discretion only where it relies on clearly erroneous facts. *Newark Branch, NAACP v. City of Bayonne*, 134 F.3d 113, 120 (3d Cir. 1998).

> Under this standard, a finding is 'clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' This standard does not permit the reviewing court to conduct a *de novo* review of the evidence, but it does allow the court to consider whether there is enough evidence in the record to support the factual finding of the district court. *Id.*

Under the clear error standard of review, a reviewing court's "sole function is to review the record to determine whether the findings of the District Court were clearly erroneous, i.e., whether we are 'left with a definite and firm conviction that a mistake has been committed.'" *Krasnov v. Dinan*, 465 F.2d 1298, 1302 (3d Cir. 1972); *quoting Speyer, Inc. v. Humble Oil and Ref. Co.*, 403 F.2d 766, 770 (3d Cir. 1968).

Here, Judge Cavanaugh did not abuse his discretion when entering the January 4, 2006 injunction, barring the Petitioners from pursuing any claims against the Respondents arising from the denial of Petitioners' security guard contracts with the County of Hudson. The procedural history clearly demonstrates how the injunction is firmly rooted in the principles of *res judicata* and collateral estoppel.

Petitioners continually attempted to achieve a favorable verdict numerous times by re-filing suits for the same causes of action based on the same set of allegations and seeking the same recovery.

Here, the lower court's determination that Petitioners' Third Amended Complaint was an attempt simply to re-litigate the Complaint under 02-cv-5948 (DMC) was founded in a comparison of both Complaints. (Pet. App. 31 to App. 34) Most notably, the prayer for relief in Petitioners' State Court Complaint sought damages that they claimed they were due under the previously dismissed Federal Court Complaint. (Pet. App. 32)

The allegations of *ultra vires* payments, fraud, conspiracy and an illegal settlement between Labor Management Concepts ("LMC") and Hudson County have been continually raised since 1996 and in the context of several state and Federal Court litigations. Each and every court to consider those allegations has rejected them on the face of the allegations. Some courts have entered multiple sanctions against Petitioners and others have ordered them to stop filing further pleadings. Once a settlement was reached between Hudson County and LMC, Petitioners lost their ability to step into the shoes of Hudson County to seek relief as tax payers. *N.J.S.A.* § 2A:15-18. Regurgitating the same claims as the Respondents' attempts to deprive Petitioners of their Due Process was concluded as an obvious attempt at re-litigation. Although Petitioners contended that they added an

additional cause of action based on fraud and conspiracy, they were merely attempting to use the State Court Complaint to re-litigate the allegations of *ultra vires* payments to LMC and the invalidity of the 1997 settlement agreement.

Regardless, the record is clear that these issues have been raised and disposed. As such, the District Court concluded that Petitioners' Third Amended Complaint was an attempt to re-litigate the factual and legal allegations in 02-cv-5948 (DMC). Therefore, the issuance of a permanent injunction against Petitioners was grounded in the record and necessary to avoid re-litigation of prior allegations.

Finally, even a *de novo* review of the legal issues would lead to the same conclusion as those of the District Court and Third Circuit Court of Appeals. Petitioners have continuously attempted to re-litigate the exact same issues however recycled and represented under different descriptions. The injunction was proper and Petitioners' motion for reconsideration of that Order was properly denied. Accordingly, the Petition for Writ of Certiorari should be denied.

II. THE LOWER COURT'S RULING COMPLIES WITH RULE 52 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Petitioners seek reversal of the lower court's injunction for the court's alleged failure to comply with Fed. R. Civ. P. 52.

It should be noted that Petitioners' challenge to the lower court's ruling under Fed. R. Civ. P. 52 should be dismissed as waived. Petitioners did not raise the issue of whether the lower court made sufficient findings under Fed. R. Civ. P. 52 in their appeal to the Third Circuit.

Even if the issue is deemed ripe on appeal, a review of the lower court's opinion makes it clear that it is well grounded in an exhaustive thirteen year procedural history. The District Court cites to its comparison of the past and current allegations by Petitioners in concluding that the current allegations are an attempt to re-litigate prior claims. Further, the lower court referenced and included in its January 4, 2006 Opinion, its prior Opinion of June 2, 2003, which also included an extensive resuscitation of the Complaints and allegations set forth by Petitioners. Indeed, the District Court's June 2, 2003 Opinion, incorporates the numerous findings of Judge Bassler. (Pet. App. 2 and Resp. App. 45 to App. 83) *See generally In re Woodmar Realty Co.*, 307 F.2d 591 (7th Cir. 1962) (reference to separate opinions sufficient to satisfy Rule requiring findings of fact). Further, Judge Bassler's extensive opinion of February 8, 2005, begins with the recognition that, "it's like déjà vu all over again." (Resp. App. 2) Accordingly, the lower court complied with Fed. R. Civ. P. 52.

Finally, Petitioners' claim that the District Court did not address their claim of spoliation is simply wrong. In its February 28, 2006 Opinion, the lower court determined that Petitioners' spoliation claim

was another attempt to re-litigate their prior claims of fraud and conspiracy. (Pet. App. 24) This was yet another example of how Petitioners are well versed at manipulating the legal system.

Further, even if a claim of "spoliation" can be gleaned from Petitioners' State Court Complaint, New Jersey does not recognize a separate tort of spoliation of evidence. *See Jerista v Murray*, 185 N.J. 175, 201-202 (2005). Rather, Petitioners simply allege, as they have always done, that the Respondents failed to produce information or otherwise failed to admit to wrongdoing thus causing the dismissal of civil action number 02-cv-5948 (DMC). These arguments, as in all of Petitioners' arguments in all five Federal Court actions, is just another door back to the allegations of fraud, corruption, illegal settlements and *ultra vires* payments born in the 1995 litigation. The allegations in Petitioners' State Court Complaint were nothing more than a collateral, if not direct, attack on the District Court's prior order and/or are yet another attempt to litigate issues raised and dismissed in 02-cv-5948, all of which are an attempt to re-litigate the 1995 litigation.

The District Court determined that the allegations in the Third Amended Complaint, even if they alleged spoliation or fraudulent concealment, were nothing but subterfuge for an attempt to re-litigate prior allegations. Indeed, the allegations of spoliation and/or fraudulent concealment are part and parcel of the allegations of a cover-up between counsel to deprive the Petitioners of their Due Process rights,

starting with their Fed. R. Civ. P. 60 motion before Judge Bassler in March of 2002 and continuing in subsequent Federal and State Court Complaints, including the Third Amended Complaint.

Accordingly, Petitioners have presented no basis for this court to reverse the January 4, 2006 injunction and/or the Order denying Petitioners' motion for reconsideration. Therefore, the Petition for Writ of Certiorari should be denied.

III. AFTER ALMOST THIRTEEN YEARS OF LITIGATION, PETITIONERS WERE NOT DENIED DUE PROCESS.

Petitioners have filed countless Complaints, Amended Complaints, motions and appeals over the course of this matter which is approaching its thirteenth anniversary. Petitioners have been provided with more process than they have ever been due. Their abusive litigation practices have yielded numerous sanctions under Fed. R. Civ. P. 11; they have been chided by more than one court, have been held in civil contempt and are flirting with being held in civil confinement for their antics. Petitioners' conduct is more reminiscent of what Charles Dickens observed over a hundred and fifty years ago, putting into literature the fallout from abusive and vexatious litigation:

> *Jarndyce* [*vs.*] *Jarndyce* drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive

> knows what it means. The parties to it understand it least, but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in *Jarndyce* [*vs.*] *Jarndyce* without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant who was promised a new rocking-horse when *Jarndyce* [*vs.*] *Jarndyce* should be settled has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out . . . but *Jarndyce* [*vs.*] *Jarndyce* still drags its dreary length before the court, perennially hopeless.

Bleak House, Chapter One, Charles Dickens (1852).

Despite their vociferous protestations, the well grounded opinions of the lower courts reveal that the permanent injunctions were properly issued. Petitioners have had their Due Process. Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

The District Court issued the injunction against Petitioners prohibiting them from pursuing any claims against the Respondents arising from the denial of Petitioners' security guard contracts with the County of Hudson in response to their attempt to file a Third Amended Complaint. This injunction was proper as the issues raised in the State Court Complaint are identical to those raised in the prior Federal Court Complaints.

Because the permanent injunction issued by Judge Cavanaugh is well founded in the record and appropriate under the circumstances, the lower court did not abuse its discretion. Therefore, the decision of the District Court should be upheld and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al., Plaintiffs, v. BOARD OF CHOSEN FREEHOLDERS FOR THE COUNTY OF HUDSON, et al., Defendants.	No. 00-591 (WGB) OPINION (Filed Feb. 8, 2005)

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BASSLER, DISTRICT JUDGE:

To borrow a phrase from Yogi Berra, this feels like "*deja vu* all over again."

Eileen Gilgallon owns Consec Security Services, Inc., later renamed CFS Services, Inc. ("CFS"), a licensed private detective agency. Ronald Gilgallon is her husband. In 1995 and 1996, Hudson County solicited bids for security services contracts for various Hudson County facilities. CFS submitted the lowest bids for both the 1995 and 1996 contracts. Hudson County nevertheless disqualified CFS because of CFS' suspected ties to Ronald Gilgallon, who had previously been convicted of insurance fraud.

Although the underlying events involved in this action are relatively straightforward, the procedural history is anything but simple. Indeed, over the course of more than nine years, Ronald and Eileen Gilgallon, and Mary Hennig, a CFS employee ("Plaintiffs"), have initiated at least seven separate lawsuits relating to Hudson County's rejection of CFS' bids.

Plaintiffs have brought these actions in both New Jersey state court and in federal district court. Innumerable motions have been filed in connection with these proceedings. All of the complaints filed by Plaintiffs in federal district court have been

dismissed. Two district courts, including this one, have imposed Rule 11 sanctions against Plaintiffs. The Third Circuit has twice affirmed the dismissal of Plaintiffs' claims and the imposition of sanctions. Plaintiffs nevertheless remain undaunted.

In August 2003, Plaintiffs commenced yet another lawsuit in New Jersey Superior Court, this one styled as a legal malpractice action. In addition to suing their own attorneys, Plaintiffs name Michael Dermody ("Dermody") as a defendant. Dermody is an attorney employed by Hudson County. Dermody represented Hudson County in several of the prior federal proceedings, and was also named as a defendant in several of the federal complaints. Dermody now applies to this Court for a temporary and/or permanent injunction barring Plaintiffs from pursuing any further action against him in the Superior Court of New Jersey under docket number HUD-L-4228-03.

In addition, Dermody seeks Rule 11 sanctions against the Plaintiffs.

The Court has painstakingly reviewed the voluminous record generated in connection with these proceedings. The Court has also considered the parties' briefs, including supplemental submissions. In addition, the Court held oral argument on January 24, 2005, at which time Dermody, Plaintiffs, the State of New Jersey, and Plaintiffs' former attorneys were all given an opportunity to address the Court.

Dermody invokes this Court's power to exercise jurisdiction pursuant to 28 U.S.C. § 2283 (the "Anti-Injunction Act").[1]

For the reasons set forth below, the motion for a permanent injunction is **granted**. The motion for Rule 11 sanctions is **denied**.

I. BACKGROUND AND PROCEDURAL HISTORY

In July 1994, Hudson County solicited bids for a one-year contract to provide security services at various Hudson County facilities (the "1995 Contract"). (Brief in Support of Order to Show Cause ("Br. in Support") at 1.) CFS submitted the lowest bid for

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[1] Plaintiffs' argument that this Court cannot issue an injunction because it does not have original jurisdiction over Plaintiffs' state court action is patently wrong. As discussed below, the Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgement." 28 U.S.C. § 2283. The Hudson County attorneys invoke the third exception set forth in the statute – "to protect or effectuate its judgment." In such cases, the jurisdiction that the federal court had when it entered its original judgment is enough to support the issuance of an injunction. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934) ("That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled."); *Royal Ins. Co. v. Quinn-L Capital Corp.*, 960 F.2d 1286, 1292 (5th Cir. 2002).

the contract. Hudson County suspected, however, that Ronald Gilgallon, CFS' former principal, who had been convicted of insurance fraud, continued to maintain close ties to CFS. Hudson County therefore rejected CFS' bid on the basis that CFS was not the "lowest responsible bidder" under local law and awarded the contract to the second lowest bidder, Labor Management Concepts ("LMC"). (*Id.* at 2.)

A. 1995 and 1996 State Court Litigation

Upset over the denial of its bid, CFS filed an Order to Show Cause with Temporary Restraints in New Jersey Superior Court. (*Id.*) CFS named as defendants the Hudson County Board of Chosen Freeholders ("Board of Freeholders") and LMC. (Complaint filed in *CFS v. Board of Chosen Freeholders of the County of Hudson*, HUD-L-4726-95.) After initially granting CFS' application for a temporary restraining order, Judge Ryan modified the Order to permit Hudson County to award the 1995 Contract to LMC. (June 14, 1995 Order filed in HUD-L-4726-95; June 21, 1995 Order filed in HUD-L-4726-95.)

Unhappy with Judge Ryan's decision, CFS filed an application for emergent relief with the Appellate Division, seeking a stay of Judge Ryan's Order. On September 22, 1995, the Appellate Division issued an Order directing the trial court to remand the matter to the Director of Hudson County for Purchasing for the purpose of conducting a responsibility hearing on the 1995 Contract. (September 22, 1995 Order filed in

A-724-95T2.) Accordingly, on November 3, 1995, Judge Margulies remanded the matter. (November 3, 1995 Order filed in HUD-L-4726-95.) For unknown reasons, however, no hearing was held at that time, nor did CFS move for one. (Br. in Support at 3.)

Meanwhile, Hudson County began soliciting bids for its 1996 security services contract ("1996 Contract"). CFS filed a second Order to Show Cause with Temporary Restraints with the Superior Court of New Jersey seeking to restrain Hudson County from bidding the 1996 Contract until a hearing on the 1995 Contract was held. (*Id.* at 3-4.) On June 28, 1996, Judge Gallipoli denied CFS' application for a temporary restraining order. (June 28, 1996 Order filed in HUD-L-4726-95.)

CFS thereafter submitted the lowest bid for the 1996 Contract. Hudson County again rejected CFS' bid as "non-responsible." CFS appealed the decision to the Superior Court and, on November 18, 1996, Judge Margulies once again ordered that a responsibility hearing be conducted. (Br. in Support at 4.)

Before the responsibility hearing was held, CFS filed an amended complaint in Superior Court. The amended complaint alleged, among other things, that: (1) LMC and various Hudson County officials colluded to prevent CFS from being awarded the 1995 and 1996 Contracts; and (2) LMC received special treatment from Hudson County officials. (*Id.* at 5; Amended Complaint filed in HUD-L-4726-95.)

In its response to CFS' amended complaint, Hudson County asserted a separate cross-claim against LMC. Specifically, Hudson County sought to recover the costs of certain unauthorized telephone charges that LMC had incurred at a Hudson County facility where LMC provided security services. (Complaint filed in *Gilgallon v. County of Hudson*, 00-0591 ("Gilgallon I Complaint") at ¶ 25.)

On September 17, 1997, a responsibility hearing was finally conducted. After a ten-day hearing, an independent hearing officer determined that CFS was not a "responsible bidder" within the meaning of the Local Public Contracts Law. Accordingly, the hearing officer affirmed Hudson County's denial of both the 1995 and 1996 Contracts to CFS. (Br. in Support at 4-5.)

On October 23, 1997, after reviewing the hearing officer's findings of fact and law, Judge Gallipoli issued an Order: (1) affirming Hudson County's decision that CFS was not a responsible bidder; (2) dismissing CFS' complaint; (3) denying CFS' application for a stay pending appeal; and (4) denying CFS' motion to file an amended complaint. (October 23, 1997 Order filed in HUD-L-4726-95.)

On November 5, 1997, the Appellate Division denied CFS' application for a stay of Judge Gallipoli's October 23, 1997 Order. (November 5, 1997 Order filed in HUD-L-4726-95.) Two days later, on November 7, 1997, CFS filed various miscellaneous motions, including a motion for reconsideration of the October

23, 1997 Order and a motion to disqualify Judge Gallipoli. (Gilgallon I Complaint, at ¶ 33.)

Around this time, the Board of Freeholders passed a resolution authorizing Hudson County's counsel to accept $30,000 from LMC to settle "any and all cross-claims" between Hudson County and LMC "including the cost of the unauthorized telephone calls." Pursuant to the Resolution, Hudson County and LMC executed a Settlement Agreement and Stipulation of Dismissal, settling "all claims and counterclaims that Hudson County has filed or could have filed against [LMC]." (Gilgallon I Complaint at ¶ 34.)

Finally, on May 21, 1998, Judge Gallipoli issued an Order permitting Hudson County to award a two-year security services contract to LMC. That same day, Hudson County and LMC executed a security services contract for the period from January 1998 through January 2000. (*Id.* at 10.)

While an appeal of Judge Gallipoli's Order was pending before the Appellate Division, CFS filed a "motion in aid of litigant's rights" with the Law Division, challenging the legality of the security services contract between Hudson County and LMC. (Gilgallon I Complaint ¶ 40.) On September 24, 1998, Judge Gallipoli denied CFS' motion, stating that:

> Plaintiff's motion 'in aid of litigants' rights' is denied as I determine that there is neither a factual or legal predicate for granting the relief requested. Given the fact that this

> matter is pending in the Appellate Division, a serious question exists as to this Court's jurisdiction to hear this motion. Regardless, assuming jurisdiction for the sake of decision, the motion is denied.

(Gilgallon I Complaint at ¶ 41.)

In May 1999, the Appellate Division denied CFS' appeal, explaining that "the central issue on appeal was whether the County acted improperly and rejected plaintiff's bids under the N.J.S.A. 40A:11-6.1 requirement that contracts shall be awarded to the lowest responsible bidder." (Gilgallon I Complaint at ¶ 42.) In addition, the Appellate Division affirmed Judge Gallipoli's finding that the Settlement Agreement executed by Hudson County and LMC was proper. (*Id.*)

In October 1999, the New Jersey Supreme Court denied CFS' petition to appeal. That decision, however, did not put an end to Plaintiffs' litigation. Rather, the state court proceedings were merely a prelude to what would occur in federal court.

B. 2000-2004 Federal Court Litigation

1. Litigation Filed with this Court (Gilgallon I)

Dissatisfied with the outcome of the state court proceedings, Plaintiffs commenced litigation in federal district court. On February 4, 2000, Plaintiffs filed a law suit on behalf of themselves as individuals

and as Hudson County taxpayers[2] ("Gilgallon I"). Plaintiffs named as defendants Hudson County, the Board of Freeholders, and LMC. (Gilgallon I Complaint.) Plaintiffs alleged that: (1) LMC intentionally violated its contract with Hudson County; and (2) the Settlement Agreement and Stipulation of Dismissal were fraudulent. (*Id.*)

On January 31, 2001, this Court dismissed Plaintiffs' complaint, finding that: (1) there was no merit to Plaintiffs' theory that the Stipulation of Dismissal filed with the Superior Court was fraudulent; and (2) the Settlement Agreement released all of Hudson County's claims against LMC. (July 31, 2002 Opinion and Order filed in 00-CV-0591 ("July 31, 2001 Opinion and Order.")

Plaintiffs then filed a motion pursuant to Fed. R. Civ. P. 59(e) for reconsideration. On March 30, 2001, this Court denied Plaintiffs' motion, stating that Plaintiffs inappropriately "rehashed arguments that were or could have been raised previously and essentially ask[ed] the Court to rethink what it already thought through – wrongly, according to Plaintiffs." (March 30, 2001 Opinion and Order filed in 00-CV-0591 ("March 30, 2001 Opinion.")

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[2] The defendants in Gilgallon I challenged Plaintiffs' standing to bring a taxpayer action. Since the action was dismissed on other grounds, however, the issue of standing was never addressed by the Court.

After filing and ultimately withdrawing an appeal to the Third Circuit, Plaintiffs again filed numerous reconsideration and other miscellaneous motions with this Court. All of Plaintiffs' motions were denied. (*See* March 19, 2002 Opinion and Order filed in 00-CV-591 ("March 19, 2002 Opinion.")) Moreover, the Court imposed Rule 11 sanctions, noting that "Plaintiffs have abused the judicial process at every turn, filing vexatious pleadings and frivolous motions, re-litigating stale issues and repeatedly filing motions with this Court." (*Id.*)

Ultimately, the Third Circuit affirmed this Court's denial of Plaintiffs' Rule 60(b) motions and the imposition of sanctions, expressly warning Plaintiffs that "[t]he federal court system is not a playground to be used by litigants for harassing those they dislike." (July 16, 2004 Opinion in *Gilgallon v. Hudson County*, 02-CV-1864 ("Third Circuit's July 16, 2004 Opinion."))

2. Litigation Before Judge Hayden (Gilgallon II)

On February 7, 2002, while Gilgallon I was still pending, Plaintiffs commenced another federal lawsuit, this time before Judge Hayden ("Gilgallon II"). The complaint named as defendants Plaintiffs' former attorneys and Hudson County Attorney Dermody and set forth claims virtually identical to the ones alleged in the Current State Court Action. (*See* Complaint

filed in *Gilgallon v. Shea*, 02-CV-524 ("Gilgallon II Complaint.")).

In a Letter-Order dated April 8, 2002, Magistrate Judge Hedges wrote that Plaintiffs' complaint in Gilgallon II "was closely related to the separate civil action before Judge Bassler." (April 8, 2002 Letter-Order filed in 02-CV-524. Judge Hedges went on to conclude that "the substance of the facts which give rise to the various claims in the proceeding *sub judice* were decided *on the merits* against Plaintiffs by Judge Bassler in his March 19th Opinion and Order." (*Id.*) Accordingly, Judge Hedges stayed Gilgallon II pending a final judgment in Gilgallon I, administratively terminated Gilgallon II, and concluded that "once Judge Bassler's Order [in Gilgallon I] becomes final, a motion to dismiss [in Gilgallon II] would be appropriate." (*Id.*)

On July 23, 2002, Judge Hayden affirmed Magistrate Judge Hedge's ruling. (July 23, 2003 Letter-Order filed in 02-CV-524.)

3. Additional Litigation Before this Court (Gilgallon III)

On September 5, 2002, Plaintiffs filed a third federal complaint against various individual and John Doe defendants, including Hudson County Attorney Dermody ("Gilgallon III"). (Docket Sheet in *Gilgallon v. Coleman*, 02-CV-4319.) As this Court explained in its Opinion dismissing Gilgallon III, "Plaintiffs' suit is premised on their purported right

to require [Hudson] County to submit an appellate brief pursuant to LAR [Local Appellate Rule] 31.2" in the Gilgallon I proceedings. (October 15, 2003 Order and Opinion filed in 02-CV-4319.) This Court dismissed Plaintiffs' complaint *sua sponte* on the basis that there was already a motion to compel Hudson County to file a brief pursuant to LAR 32.1 pending before the Third Circuit's Merits Panel. (*Id.*)

4. Litigation Before Judge Cavanaugh (Gilgallon IV)

On December 17, 2002, Plaintiffs filed a ninety-page complaint before Judge Cavanaugh ("Gilgallon IV"), alleging conspiracy, racketeering, fraud, corruption, mail fraud, wire fraud, obstruction of justice, embezzlement, theft of services, attorney misconduct, defamation, and violations of the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution. (Complaint filed in *Gilgallon v. County of Hudson*, 02-CV-5948 ("Gilgallon IV Complaint")) Plaintiffs named over twenty defendants, including Hudson County Attorneys Michael Cifelli ("Cifelli"), Francis DeLeonardis ("DeLeonardis"), and Mark Morchel ("Morchel"). (*Id.*)

On June 28, 2003, Judge Cavanaugh dismissed Plaintiffs' complaint, finding that Plaintiffs' allegations that the Settlement Agreement and Stipulation of Dismissal were invalid had already been adjudicated by the New Jersey state court, by this Court in Gilgallon I, and by Judge Hayden in Gilgallon II.

Judge Cavanaugh imposed additional Rule 11 sanctions against Plaintiffs and ordered that "Plaintiffs may not file another Complaint against any of the captioned Defendants unless prior written approval is given by this Court." (May 30, 2003 Opinion filed in 02-CV-5948 ("Judge Cavanaugh's May 30, 2003 Opinion.")).

On June 9, 2004, the Third Circuit affirmed Judge Cavanaugh's ruling. (June 9, 2004 Opinion in *Gilgallon v. County of Hudson*, 03-CV-2887 & 03-CV-4000) ("Third Circuit's June 9, 2004 Opinion.")).

5. Additional Litigation Before this Court (Gilgallon V)

On July 16, 2003, Plaintiffs filed yet another complaint with this Court, alleging that Plaintiffs' attorneys colluded with Hudson County Attorney Dermody to deprive Plaintiffs of their due process rights ("Gilgallon V"). (Complaint filed in *Gilgallon v. Novy*, 03-CV-3366.)

In a January 12, 2002 Letter-Order, this Court held that Plaintiffs' complaint was barred by Judge Cavanaugh's Order prohibiting Plaintiffs from filing additional pleadings without prior permission of the Court. (January 12, 2004 Letter-Order filed in 03-CV-3366.)

C. Current State Court Proceedings

Undaunted by the multiple adverse rulings against them in both state and federal court, Plaintiffs commenced a legal malpractice action against their former attorneys in August 2003 in the Superior Court of New Jersey ("Current State Court Action") before the Honorable Francis L. Antonin. Plaintiffs argue that their former attorneys, Robert Shea, Stacie Brustman, and the law firm of Shea & Associates, failed to provide them with competent legal counsel during the course of representing Plaintiffs in Gilgallon I.[3] In fact, Plaintiffs not only allege that their former attorneys provided inadequate legal representation, but also that they actively worked against Plaintiffs' interests by conspiring with Plaintiffs' adversaries to have Plaintiffs' complaint dismissed.

In June 2004, Plaintiffs filed a second amended complaint, adding Hudson County Attorney Dermody as a defendant ("Second Amended State Court Complaint"). In July 2004, Dermody filed a motion to dismiss. Judge Antonin denied the motion. Dermody thereafter filed a motion for reconsideration which is currently pending before Judge Antonin.

In September 2004, Plaintiffs filed a motion for leave to file a proposed third amended complaint,

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[3] Robert Novy, another attorney with Shea & Associates, was named as a defendant in the First Amended Complaint filed by Plaintiffs in the Current State Court Action.

adding as defendants Hudson County Attorneys Cifelli, Morchel, and DeLeonardis. These defendants filed a motion to dismiss in lieu of an answer which is also currently pending before Judge Antonin.

D. Motions Currently Before this Court

On October 1, 2004, with the state court motions pending before Judge Antonin, Dermody, Cifelli, DeLeonardis, and Morchel filed an application for emergent relief, asking this Court to enjoin the Current State Court Action pursuant to 28 U.S.C. § 2283 (the "Anti-Injunction Act"). The Court initially scheduled oral argument for November 1, 2004.

Mindful of the Supreme Court's warning in *Atlantic Coast Line*, 398 U.S. 281, 297 (1970), that "[a]ny doubt as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy," this Court issued an Order on October 29, 2004 stating that it was "particularly reluctant to intervene when the state court has pending before it a motion to dismiss filed by Messrs. Cifelli, DeLeonardis, and Morchel and a motion for reconsideration filed by Mr. Dermody." (October 29, 2004 Letter-Order filed in 00-CV-591.) Accordingly, this Court adjourned oral argument until January 24, 2005 in order to give Judge Antonin an opportunity to rule on the motions pending in Superior Court.

On November 4, 2004, however, the Court learned that Judge Antonin had stayed the Current State Court Action until this Court ruled on the motion for an injunction. (November 4, 2004 Letter from Michael A. Cifelli to Judge Antonin with a copy to this Court).

On January 24, 2005, the Court heard oral argument. Dermody, Plaintiffs, the State of New Jersey, and Plaintiffs' former attorneys were all given an opportunity to address the Court. At oral argument, Plaintiffs informed the Court that they had withdrawn their motion to file the proposed Third Amended Complaint naming Cifelli, DeLeonardis, and Morchel as defendants. (1/24/05 Transcript of Hearing on the Order to Show Cause in 00-0591.) Accordingly, only Dermody's request for an injunction needs to be considered at this time.

II. DISCUSSION

Dermody requests that this Court enjoin the Current State Court Action in order to prevent Plaintiffs from relitigating issues and claims that have already been decided in prior federal proceedings.

In order to grant such an injunction, this Court must first determine whether the action falls within one of the exceptions to 28 U.S.C. § 2283 ("Anti-Injunction Act"). If it does not, then an injunction cannot be issued regardless of the facts of the underlying case. If an exception does apply, then the Court must consider the merits of the injunction request

itself. *See Bonser v. New Jersey*, 605 F.Supp. 1227, 1229-30 (D.N.J. 1985) (internal citations omitted).

A. The Anti-Injunction Act

The Anti-Injunction Act prohibits federal courts from enjoining state court proceedings unless the injunction falls within one of several narrowly defined exceptions. 28 U.S.C. § 2283. As the Supreme Court has explained, this general prohibition "forestalls the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (internal citations and quotation marks omitted).

Under the Anti-Injunction Act, a federal court may only enjoin a state court proceeding if the injunction is: (1) expressly authorized by statute; (2) necessary in aid of its jurisdiction; or (3) necessary to protect or effectuate a prior judgment. 28 U.S.C. § 2283; *see U.S. Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170, 1176 (3d Cir. 1989). Dermody argues that the third exception – commonly referred to as the "relitigation exception" – applies here.

"The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court." *Chick Kam Choo*, 486 U.S. at 147; *In re Diet Drugs Prod. Liab. Litig.*, 369 F.3d 293, 305 (3d Cir. 2004). As one commentator has explained, the

relitigation exception "prevents the harassment of federal court litigants by repetitive state court proceedings and ensures the finality of the federal courts' decisions." Erwin Chemerinsky, Federal Jurisdiction § 11.2.4 (3d ed. 1999). Invoking these principles, Dermody contends that the Court should enjoin the state court proceedings because a federal court has already ruled on Plaintiffs' allegations of attorney fraud, corruption, conspiracy, and collusion.

B. State Court's Consideration of the *Res Judicata* Issue

Before turning to the merits of Dermody's argument that an injunction is warranted, this Court must first consider the State of New Jersey's argument that the Court "is barred from ruling on [Dermody's] order to show cause because the Superior Court in the pending state action has already decided the issue of *res judicata* as it applies to the [Dermody]." (Attorney General's Letter-Brief in Opposition to the Order to Show Cause ("AG's Opp. Br.") at 4.)

The State of New Jersey is correct that although the Anti-injunction Act permits a federal court to enjoin a state court proceeding in order to protect and effectuate a federal court's prior judgment, such an injunction is not permitted if a state court has already ruled on and rejected the argument that *res judicata* bars the state court proceeding. *See Parsons*

Steel, Inc. v. First Alabama Bank, 474 U.S. 518 (1986).

For example, in *Parsons Steel*, the plaintiffs sued the bank defendant in Alabama state court for fraud. Plaintiffs thereafter filed a complaint against the bank in federal district court, alleging that the same conduct that was the subject of the state court action also violated a federal statute. Before a judgment was entered in the state court action, the district court granted judgment in favor of the bank. After the federal judgment was entered, the bank pleaded in the state action the defense of *res judicata* and collateral estoppel. The state court found that *res judicata* did not bar the state action and a jury ultimately found in favor of the plaintiffs. The bank then applied to the federal court to enjoin the state court proceeding. The district court granted the injunction and the Eleventh Circuit Court of Appeals affirmed.

Reversing the judgments of the lower courts, the Supreme Court held that "[o]nce the state court has finally rejected a claim of *res judicata*, then the Full Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision." *Id.* at 772. Accordingly, the Court remanded the action for a determination of whether another Alabama state court would give preclusive effect to the state court's ruling on the *res judicata* issue.

Although the principle announced in *Parsons Steel* undoubtably remains good law, this Court finds

that it does not apply to the facts presented here. In *Parsons Steel*, the defendant sought to enjoin the state court proceeding *after* the state court ruled on the *res judicata* issue and issued a final judgment. In contrast, no final judgment has been entered in the Current State Court Action.

Here, Dermody filed a motion to dismiss, claiming that the allegations asserted against him in the Second Amended State Court Complaint "are barred by the entire controversy doctrine and the doctrines of issue/claim preclusion." (Brief in Support of Motion to Dismiss the Second Amended Complaint ("Br. in Support of Motion to Dismiss") at 4.) In Dermody's words, "there is simply nothing new to the Plaintiffs' Complaint." (*Id.*) Judge Antonin, however, did not agree.

At the hearing on the motion to dismiss, Judge Antonin stated:

> [t]his Court does not find that this – these causes of action have been disposed in other courts, and therefore, does not find that the – that either collateral estoppel or *res judicata* apply.

(*See* 7/23/04 Transcript of State Court Motion Hearing ("7/23/04 Tr.") at 51:20-23.) Both Plaintiffs and the State of New Jersey argue that Judge Antonin's denial of the motion to dismiss and her remarks concerning Dermody's *res judicata* defense constitute a final judgment on the *res judicata* issue. Therefore, they reason, under *Parsons Steel*, this Court cannot

enjoin the state court proceedings on the basis of the relitigation exception to the Anti-Injunction Act. The Court is not persuaded by this argument.

Judge Antonin's denial of the motion to dismiss does not constitute a final judgment on the *res judicata* issue. Rather, under New Jersey law, it is an interlocutory order from which there is no automatic right to appeal. *See* N.J. Rules of Court 2:2-4; *see also Nolan v. First Colony Life Ins. Co.*, 345 N.J. Super. 142, 154-55 (N.J. Super. Ct. App. Div. 2001) (federal district court's denial of Rule 12(b)(6) "does not have *res judicata* effect because no final judgment was entered"); *Petersen v. Falzarano*, 9 N.J. Super. 106, 109 (N.J. Super. Ct. App. Div. 1950) ("[i]t is obvious that the order [denying defendant's motion to dismiss] is interlocutory"); compare *Nakash v. Marciano*, 882 F.2d 1411, 1413-15 (9th Cir. 1989) (finding that federal court could not enjoin state court proceedings because (1) state trial court denied summary judgment based on *res judicata* argument; (2) state court of appeals issued a written opinion denying a writ of mandate; and (3) under applicable state law a written opinion denying a writ of mandate has preclusive effect).

In fact, Judge Antonin denied Dermody's motion based on the conclusion that there were genuine issues of material fact that prevented disposition of the action at this preliminary stage of the litigation. As Judge Antonin stated:

> Clearly there was – I'll call it extraneous – but outside information that has been consideration [sic] by the Court in this context. So, in essence it has become a summary judgment motion. And clearly there are genuine issues of material fact.

(7/23/04 Tr. at 50:25-51:4.) Accordingly, *Parsons Steel* does not bar this Court from considering the appropriateness of an injunction under the relitigation exception of the Anti-Injunction Act.[4]

C. An Injunction Is Necessary to Protect and Effectuate this Court's Judgment in Gilgallon I

The relitigation exception to the Anti-Injunction Act "is founded in the well-recognized concepts of *res judicata* and collateral estoppel."[5] *Chick Kam Choo*,

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[4] Plaintiffs' argument that Dermody should not be granted injunctive relief because he chose to raise the *res judicata* defense in state court is also unpersuasive. *See e.g. Amalgamated Sugar Co. v. NL Indus., Inc.*, 825 F.2d 634, 641 (2d Cir. 1987) (finding that it was proper for defendant to move for summary judgment in the state court on *res judicata* grounds before seeking injunctive relief in federal court); *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45, 48 (7th Cir. 1976) (rejecting the argument that by filing a motion to dismiss in state court and waiting one year before seeking injunctive relief in federal court appellant waived right to an injunction).

[5] In *Kaspar Fire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535-36 (5th Cir. 1978), the Fifth Circuit provides a helpful discussion of the doctrines of claim preclusion (also

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486 U.S. at 147. An essential prerequisite for applying the relitigation exception "is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal courts." *Chick Kam Koo*, 486 U.S. at 148. This requirement is "strict and narrow" and should be based on an assessment of "the precise state of the record and what the earlier federal order *actually said*; it does not permit the District Court to render a *post hoc* judgment as to what the order was *intended* to say." *Id.* (emphasis in the original); *see also Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 643 (2d Cir. 1989) (the relitigation exception "protects only matters that actually have been decided by a federal court").

Plaintiffs argue that the Current State Court Action cannot be enjoined because the claims asserted bear no relation to those raised in the prior federal proceedings.[6] In Plaintiffs' words:

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referred to as "*res judicata*") and issue preclusion (also referred to as "collateral estoppel"). As the Fifth Circuit explains, under the rules of claim preclusion, the effect of a judgment extends to the litigation of all issues relevant to the same claim between the same parties whether or not raised at trial. *Id.* Issue preclusion bars the relitigation of issues actually adjudicated, and essential to the judgment, in a prior litigation between the same parties. *Id.*

[6] Plaintiffs also point out that Dermody was not a named defendant in the Gilgallon I Complaint. The Court notes that a party that has had a full and fair opportunity to litigate an issue determined by a final judgment is generally estopped from

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> Defendant Michael Dermody suggests that the Plaintiffs are re-litigating issues that were previously considered by the District Court. The argument is preposterous. The state action is independent of the previous federal actions. The action before the Superior Court of New Jersey is a legal malpractice matter.

(Pl. Opp. Br. at 7.)

According to Plaintiffs' theory, the Current State Court Action involves a legal malpractice claim against Dermody for fraud and professional misconduct allegedly perpetrated during the course of litigating Gilgallon I. In contrast, the Gilgallon I litigation involved claims against LMC and Hudson County for LMC's breach of the security services contract with Hudson County and for LMC's receipt of *ultra vires* payments. The two actions, Plaintiffs reason, are therefore unrelated.

At first blush, Plaintiffs' argument is persuasive. The Current State Court Action seems to involve claims that are entirely distinct from those involved in Gilgallon I. Indeed, the State of New Jersey takes just such a view, arguing that the claims and issues presented in the Current State Court Action "were never argued or decided before any federal court."

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relitigating the same issue in a subsequent action against a different defendant. *Golden v. Pacific Maritime Ass'n*, 786 F.2d 1425 (9th Cir. 1986).

(Attorney General's Supplemental Letter Brief in Opposition to the Order to Show Cause ("AG Suppl. Opp. Br."), at 6.) Upon closer examination, however, this argument does not withstand scrutiny.

1. Claims and issues raised in the Current State Court Complaint

In the Current State Court Complaint, Plaintiffs allege that Dermody engaged in three types of misconduct. First, Plaintiffs allege that Dermody formed an illegal alliance with Plaintiffs' former attorneys during the course of litigating Gilgallon I. Second, Plaintiffs argue that during Gilgallon I Dermody improperly filed various documents with the Court, thereby causing the dismissal of Plaintiffs' complaint. Third, Plaintiffs contend that Dermody concealed from the Court in Gilgallon I information establishing that the Settlement Agreement and Stipulation of Dismissal executed by LMC and Hudson County were fraudulent. The Court finds that each of these issues was adjudicated in Gilgallon I.[7]

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[7] Dermody also argues that these same issues and claims have been litigated before Judge Hayden and Judge Cavanaugh. Indeed, a review of the complaints filed in those actions reveals that many of the allegations asserted in those proceedings are similar, if not identical, to the allegations asserted in the Current State Court Action. Since the Court finds that Current State Court Action should be enjoined in order to protect this Court's judgment in Gilgallon I, however, it is not necessary at this time to determine the preclusive effect of the proceedings before Judge Hayden and Judge Cavanuagh.

a) Illegal Alliance

In the Current State Court Complaint, Plaintiffs allege that Dermody formed an illegal alliance with Plaintiffs' former attorneys during the course of litigating Gilgallon I.

- The Defendants and their adversaries simulated the entire motion and application process to deceive the Plaintiffs into believing that they were receiving effective representation. (Second Amended State Court Complaint, Count I, at ¶ 22.)
- Michael Dermody conspired with co-defendants Robert Shea and Stacie Brustman to manipulate the outcome of a federal judicial proceeding to cover up allegations of fraud and corruption initiated by the taxpayers of Hudson County. In order to accomplish this, the co-defendants formed a secret illegal alliance with one another. (Second Amended State Court Complaint, Count V, at ¶ 2.)
- The co-defendants devised a plan to simulate the entire motion and application process without the knowledge and consent of the Plaintiffs in this matter. (*Id.*, at ¶ 4.)
- Prior to filing the complaint a secret illegal alliance was formed by defendants Michael Dermody, Robert Shea and Stacie Brustman. (Second Amended State Court Complaint, Count VI, at ¶ 6.)

- The purpose of the alliance was to discretely manipulate the outcome of the federal judicial proceeding and continue the cover up of fraud and corruption. The entire motion and application process in the federal proceeding was simulated. (*Id.*, at ¶¶ 7-8.)

b) Improper filings

Plaintiffs also allege that during Gilgallon I, Dermody improperly filed various documents with the Court, thereby causing the dismissal of Plaintiffs' complaint.

- During the simulation process, the taxpayers' adversaries secretly filed an unopposed motion to dismiss the taxpayer action. (Second Amended State Court Complaint, Count I, ¶ 23.)

- The Defendants and their adversaries . . . allowed an unopposed motion to dismiss the taxpayers' action to be filed with the court. (Second Amended State Court Complaint, Count III, ¶ 8)

- Defendant Michael Dermody drafted and executed a motion to dismiss the taxpayer complaint on April 14, 2000 and did not file the document in the Federal Court. (Second Amended State Court Complaint, Count V, ¶ 6.)

- Defendants and their adversaries simulated the filing of: (1) March 31, 2000

motion to dismiss; (2) April 14, 2000 cross motion to dismiss the complaint; (3) Plaintiffs' July 26, 2000 Opposition Brief; and (4) Defendants' July 28, 2000 reply to Plaintiffs' opposition. Plaintiffs were told these were filed, but they were not. (Second Amended State Court Complaint, Count III, ¶¶ 10-20.)

c) Dermody concealed the fact that the Settlement Agreement was fraudulent

Plaintiffs contend that Dermody concealed from the Court in Gilgallon I information establishing that the Settlement Agreement and Stipulation of Dismissal were fraudulent.

- Defendant Michael Dermody clearly understood that the settlement agreement was a fraud. (Second Amended State Court Complaint, Count VI, ¶ 31.)
- [Dermody] knew that the settlement agreement was not executed by the county executive and the board clerk as required by law. (*Id.*, ¶ 36.)
- Dermody knew that the defendants Brustman and Shea possessed evidence that clearly exposed the settlement between the county and [LMC] was a fraud. (*Id.*, ¶ 37.)
- [Despite knowing that the settlement agreement was a fraud], Dermody filed a

> cross motion to dismiss the plaintiffs' complaint on June 23, 2000. Although the Plaintiffs were never provided this document, it is assumed that Mr. Dermody did not inform the court that the documents were a fraud designed to cover up corruption in the County of Hudson. (*Id.*, ¶¶ 38-39.)

2. Plaintiffs allegations against Dermody were actually litigated and determined in Gilgallon I.

In Plaintiffs' view, the finality of this Court's judgment in Gilgallon I is not jeopardized by litigation of the Current State Court Action. Whereas Gilgallon I involved the issue of Hudson County and LMC's liability with respect to the performance of securities services contracts, the Current State Court Action seeks only to litigate the issue of Dermody's professional misconduct. Despite the superficial appeal of this line of reasoning, the Court finds that Plaintiffs' argument is no more than a sleight of hand.

In the January 31, 2001 Opinion, this Court dismissed Plaintiffs' allegations that LMC violated its security services contract with Hudson County and improperly accepted *ultra vires* payments. The basis for this Court's decision was that the Stipulation of Dismissal and Settlement Agreement executed by LMC and Hudson County released LMC from all claims that Hudson County asserted or could have

asserted against LMC. In reaching this decision, the Court: (1) determined that the Settlement Agreement and Stipulation of Dismissal were valid; and (2) rejected Plaintiffs' allegations that either were the product of fraud. As this Court wrote:

> Plaintiffs suggest that the Stipulation of Dismissal was fraudulent because the three existing Stipulations exhibit different filing dates . . . Plaintiffs' theory of fraud on this basis is meritless. (January 31, 2001 Opinion.)
>
> Plaintiffs' claim that the Settlement Agreement covers more than the scope of the discussion by the Board at its December 22, 1997 meeting . . . Plaintiffs' contention is without merit. According to the express terms of the Settlement Agreement, the Board intended to, and did in fact, release the then existing claims as well as claims that could have been brought against LMC. (*Id.*)

Plaintiffs have not been silent in the face of this Court's decision. Indeed, Plaintiffs have argued vociferously to this Court that the complaint was improperly dismissed because Plaintiffs' attorneys, their adversaries' attorneys, and even this Court conspired to have Plaintiffs' complaint dismissed. For example, the arguments set forth in Plaintiffs' brief in support of their motion for reconsideration ("Br. in Support of Reconsideration"), filed with this Court on January 31, 2002, bear a striking resemblance to the allegations in the Current State Court Action:

> The Settlement Agreement does not comply with the Hudson County Administrative Code. The document has no legal effect. (Br. in Support of Reconsideration at 6.)
>
> The County of Hudson never finalized the settlement with LMC. (*Id.*)
>
> The withholding of this key evidence allowed the defendants an opportunity to perpetrate a fraud on the court. The Board of Chosen Freeholders and the County were clearly aware that the matter wasn't settled. The County was clearly aware that the documents were not filed on December 26, 1997. LMC was well aware that the stamps on the various releases were counterfeit. The two defendants were aware that the settlement agreement drafted and executed by the attorneys was a fraud. They knew that if the documents were accepted by the courts then the taxpayers' action would be dismissed and the results of an investigation into irregularities would be eradicated. (*Id.*)
>
> The opinions of this court were based on the misguided notion that a settlement and release between LMC and the County of Hudson occurred. The evidence withheld from this court clearly indicates that this is not the case. (*Id.* at 21.)
>
> The defendants intentionally withheld evidence from this court. (*Id.* at 24.)

Plaintiffs' advanced similar arguments in their letter-brief in support of their motion to disqualify

this Court, filed on January 31, 2002 (Br. in Support of Motion to Disqualify"):

> In this instance, the Court failed to follow the clear Federal Rule of Civil Procedure. The court exhibited a bias against the plaintiffs by accepting documents that were never filed with the clerk's office. (Br. in Support of Motion to Disqualify at 2.)
>
> In this instance, the Court turned a blind eye to the obvious total disregard for the rules by all attorneys involved in this matter. (*Id.* at 3)

These very same allegations are repeated in Plaintiffs' brief in opposition to defendants' motion for Rule 11 sanctions, filed with this Court on February 11, 2002 ("Br. Opp. Sanctions"):

> The opposing attorneys decided it would be appropriate to ignore the rules and share and compare briefs prior to filing them. Afterwards, they would decide which briefs would actually be filed. The unified censorship of evidence prior to actually filing the documents allowed the attorneys to dictate the prevailing party – denying the litigants due process as provided in the Constitution of the United States. (Br. Opp. Sanctions at 23.)

However it is that Plaintiffs try to disguise the Current State Court Action, their allegations boil down to the now stale theory that the Gilgallon I complaint was dismissed because Dermody (and

others) willfully concealed information from the Court that would have established that the Settlement Agreement and Stipulation of Dismissal were invalid, thereby allowing Plaintiffs' claims to go forward.

This Court has rejected this very same argument on multiple occasions, finding that Plaintiffs' allegations of fraud, conspiracy, and collusion do not present a basis for rethinking the dismissal of the Gilgallon I Complaint. For example, in rejecting Plaintiffs' motion for reargument[8], this Court wrote:

> the issues presented by Plaintiffs in this motion were adequately briefed by the parties and addressed by the Court in its Opinion filed on January 31, 2001.

(March 30, 2001 Opinion and Order at 9.)

Likewise, in its Opinion denying Plaintiffs' motions for reconsideration[9], this Court wrote:

> Plaintiffs' argument as to the alleged fraudulent nature of the Settlement Agreement

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[8] A motion for reconsideration filed pursuant to Local Civil Rule 7.1(g) allows a party against whom an adverse judgment has been entered to "set[ ] forth concisely the matters or controlling decisions which counsel believes the Judge . . . has overlooked."

[9] Plaintiffs based their Rule 60(b) motion on grounds of: (1) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (2) fraud, misrepresentation, or other misconduct of an adverse party; and (3) other reason for justifying relief from the operation of the judgment.

> appears to be a recapitulation of their previous arguments, which this Court has already addressed . . . The Court is unable to identify any new evidence in Plaintiffs' rambling and disorganized submissions on which to base a Rule 60(b)(2) motion.

March 19, 2002 Opinion and Order at 11.) The Court went on to conclude:

> the Rule 60(b) motion, which is at the heart of the present dispute is utterly baseless. As discussed, Plaintiffs have not presented any new evidence or fraud that would change the outcome of the motion to dismiss this action for failure to state a claim. Rather, this motion rehashes the same arguments and issues already decided in the motion to dismiss and the first motion for reconsideration. Simply calling this a Rule 60(b) does not change the fact that Plaintiffs, in their present motion, make the same arguments in favor of reconsideration that this Court previously considered and denied in its decision of March 30.

(*Id.* at 25.) Finally, on July 16, 2004, the Third Circuit Court of Appeals issued a decision affirming this Court's denial of Plaintiffs' motion for reconsideration. (Third Circuit July 16, 2004 Opinion.)

Shockingly, Plaintiffs believe that they are entitled to yet another bite at the apple, convinced as they are that had this Court not been duped by Dermody and by other members of the "secret alliance," it would have ruled in Plaintiffs' favor in

Gilgallon I. Plaintiffs have made this argument time and time again. The argument has been rejected. Plaintiffs cannot now raise this claim in state court.

In reaching this conclusion, the Court finds several prior opinions instructive. First, in *Thomas v. Powell*, 247 F.3d 260 (D.C. Cir. 2001), the named plaintiffs filed an employment discrimination lawsuit in district court for the District of Columbia. Plaintiffs sought to be certified as a class. After the intervention of additional plaintiffs, the parties signed a consent decree resolving the case and agreeing that the district court should certify the class and approve the settlement. The district court conducted a fairness hearing, at which time named plaintiffs complained at length about the terms of the settlement agreement. Several of the named plaintiffs urged the court to reject the settlement agreement. After conducting additional fairness hearings, the district court approved the settlement agreement as fair and reasonable.

Several of the plaintiffs then filed suit in the Superior Court of the District of Columbia, asserting claims of professional negligence against the attorneys who represented them in the class action proceedings. Like here, the plaintiffs in *Thomas* argued that "because of these alleged breaches of duty, they lost their federal cause of action and the potential damages they might have derived from it." *Thomas*, 247 F.3d at 263. The district court was not persuaded by plaintiffs' argument and enjoined the state court proceedings.

The Court of Appeals affirmed the district court's issuance of an injunction, finding that to prove professional malpractice plaintiffs would have to show that the outcome of the federal proceeding would have been different if not for the attorneys' alleged misconduct. First, the Court of Appeals explained that in order to state a claim for legal malpractice in the District of Columbia[10], a plaintiff must demonstrate duty, breach, causation, and harm. Second, the Court of Appeals concluded that the plaintiffs could not claim they had suffered a cognizable injury without relitigating the validity of the district court's determination that the class action settlement was fair.

The Court of Appeals' analysis is worth quoting at length:

> For sake of argument we shall assume that plaintiff would be able to make his case in the Superior Court that the class action attorneys had a duty and breached it. Plaintiff would still have to prove that he suffered a

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[10] As in the District of Columbia, a plaintiff wishing to state a claim for legal malpractice under New Jersey law, must demonstrate duty, breach, proximate cause, and actual damages. *Sommers v. McKinney*, 287 N.J. Super. 1, 9-10 (N.J. App. Div. 1996). As a New Jersey Court has explained, "[t]he client bears the burden of proving by a preponderance of credible evidence that injuries were suffered as a proximate consequence of the attorney's breach of duty. This burden is not satisfied by mere conjecture, surmise or suspicion." *Id.* (internal citations omitted.)

> harm as a result. According to the complaint, his harm or injury consisted in his loss of the ability to pursue a potentially lucrative claim for damages. In explaining his theory of damages to us plaintiff adds that had [counsel] timely informed the Named Class Representatives that [there was a conflict of interest] the Named Class Representatives would have earlier engaged independent counsel to protect their personal interests. This separate counsel would have protected [plaintiff's] personal interests, he thinks, by having the class action certified with opt-out provisions allowing for individual suits. In other words, if the class action had been certified under Rule 23(b)(3), rather than Rule 23(b)(2), [plaintiffs] would have been able to opt-out and pursue individual actions (in which they suppose they would have done better). To prove this case in the Superior Court, the plaintiffs would have to establish that they were damaged because the class *should* have been certified under Rule 23(b)(3). But that necessarily would entail relitigating an issue already decided in the federal courts.

Id., at 264-65 (internal citations and quotation marks omitted).

Similarly, in *Golden v. Pacific Maritime Assoc.*, 786 F.2d 1425 (9th Cir. 1986), plaintiff represented one of three classes of individuals in a federal class action lawsuit. After three years of litigation, the parties to the class action settled the lawsuit and a

fairness hearing was conducted. Plaintiff thereafter sued his former attorney, alleging that the attorney had failed to inform him that the federal proceeding was a class action and falsely told the court that plaintiff approved of the settlement. The district court enjoined the state court lawsuit pursuant to the relitigation exception of the Anti-Injunction Act. The Court of Appeals affirmed, finding that plaintiff had the opportunity to challenge the settlement during the federal proceedings.

The Seventh Circuit employed similar reasoning outside of the class action context in *Samuel C. Ennis & Co., Inc. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976). *Woodmar* involved a bankruptcy proceeding in federal court. During the course of the proceeding, the original bankruptcy trustee and attorney were removed by the district court because of undisclosed conflicts of interest. The district court thereafter appointed a new trustee and attorney. The debtor then petitioned for removal of the new trustee and attorney on the basis that they were conspiring with the former trustee and attorney. The district court denied the petition and the Court of Appeals affirmed.

After the estate closed, the debtor sued in Indiana state court, alleging that various individuals, including the attorneys involved in the bankruptcy proceeding, conspired to procure payment for fraudulent claims and to misappropriate the assets of the estate. The district court enjoined the state court lawsuit and the Seventh Circuit Court of Appeals

affirmed, finding that "all of the same allegations of fraud were made many years earlier in the bankruptcy proceeding." *Id.* at 48.

As in the cases cited above, Plaintiffs here have had a full and fair opportunity to present their claim that Dermody's fraudulent conduct caused the improper dismissal of Plaintiffs' complaint in Gilgallon I. Further litigation of Plaintiffs' allegations would only serve to undermine this Court's decisions entered on January 31, 2001, March 30, 2001 and March 19, 2002.

D. Equitable Relief is Warranted

The Supreme Court has cautioned that "[t]he fact that an injunction may issue under the Anti-Injunction Act does not mean that it must issue." *Chick Kam Koo*, 486 U.S. at 151. In determining whether to enjoin a state proceeding, the federal court should apply general equitable principles for issuing an injunction. *Brown v. McCormick*, 608 F.2d 410, 416 (10th [sic] 1979).

As set out in detail in this Opinion, over the past nine years Plaintiffs' have taken every opportunity to abuse and harass their adversaries, as well as the state and federal judicial systems. The Court is satisfied that Dermody has demonstrated that irreparable harm would flow from having to relitigate claims that have already been decided by this Court.

Moreover, to the extent that a pending state suit is "vexatious and harassing," principles of federalism and comity are not significantly disturbed by the issuance of an injunction. *In re Baldwin-United Corp.*, 770 F.2d 328, 337 (2d Cir. 1985); *see also In re Corrugated Container Antitrust Litig.*, 659 F.2d at 1335 (finding that enjoining of state court proceedings did not violate principles of federalism where plaintiffs filed and threatened to file "duplicative and harassing litigation").

In fact, the Court finds Judge Owens observations in *Browning Debenture Holders' Comm. v. DASA Corp.* particularly resonant. In enjoining a New York State court lawsuit, Judge Owens wrote:

> In a case such as this it would be a disservice not only to the defendants, but also to the state judiciary, to allow the entire record to be placed in the lap of the New York State courts to be argued over by lawyers and puzzled over by judges for years to come. While comity requires respect for the ability of the state courts to decide the issue of res judicata properly, it also requires sympathy for the task that would confront them were this litigation to be imposed upon them.

454 F. Supp. 88, 105 (S.D.N.Y. 1978). Judge Owens' comments are equally applicable here.

Accordingly, Dermody's request for an injunction is **granted**. Plaintiffs Ronald Gilgallon, Eileen Gilgallon, Mary Hennig and their agents are enjoined and restrained from prosecuting the action against

Michael Dermody under docket number HUD-L 4228-03 in New Jersey State Court. Moreover, Plaintiffs have proven adroit and persistent in their efforts to avoid the consequences of a judgment entered against them. Consequently, this Court is taking the additional step of barring Plaintiffs and their agents from filing future complaints against Michael Dermody in any state or federal court for claims arising out of Hudson County's awarding of securities services contracts to LMC or out of the litigation concerning those contracts unless prior written approval is granted by this Court.

III. RULE 11 SANCTIONS

Fed. R. Civ. P. 11 ("Rule 11") is a device intended to curtail abuses in connection with the signing and filing of pleadings, motions and other papers. As Rule 11(b) states:

> By presenting to the Court . . . a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief . . . (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have

> evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

As the Supreme Court explains, "the central purpose of Rule 11 is to deter baseless filings in the *District Court* and thus . . . streamline the administration and procedure of the *federal courts*." *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 392 (1990) (emphasis added). Since this motion involves Plaintiffs' commencement of a lawsuit in New Jersey State Court, the Court concludes that however improper Plaintiffs' tactics may be, Rule 11 does not permit the imposition of Rule 11 sanctions. Accordingly, Dermody's motion for Rule 11 sanctions is **denied**.

III. [sic] CONCLUSION

For the reasons set forth in this Opinion, Dermody's request for an injunction is **granted**. Plaintiffs Ronald Gilgallon, Eileen Gilgallon, Mary Hennig and their agents are enjoined and restrained from prosecuting the action against Michael Dermody under docket number HUD-L 4228-03 in New Jersey State Court. In addition, Plaintiffs and their agents may not file a future complaint against Michael Dermody in any state or federal court for claims arising out of Hudson County's awarding of securities

services contracts to LMC or out of the litigation concerning those contracts unless prior written approval is granted by this Court.

Dermody's motion for Rule 11 sanctions is **denied**.

/s/ WILLIAM G. BASSLER
United States District Court

Dated: February 7, 2005

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, RONALD GILGALLON and SHAWN GILGALLON, Plaintiffs, v. THE COUNTY OF HUDSON, ROBERT JANISZEWSKI, FRANCIS DELEONARDIS, MARK MORCHEL, MICHAEL CIFELLI, THE BOARD OF CHOSEN FREEHOLDERS, NEIL CARROL, VINCENT ASCOLESE, NEPTALIA CRUZ, WILLIAM BRAKER, NIDIA DAVILA-COLON, WILLIAM O'DEA, ALBERT CIFELLI, SILVERIO VEGA, MAURICE FITZGIBBONS, CONNELL, FOLEY, LLP, JOHN P. LACEY, LABOR MANAGEMENT CONCEPTS, INC., JOHN MONROE, STATE OF NEW JERSEY, JOSEPH	**Hon. Dennis M. Cavanaugh** **OPINION** **Civil Action No. 02-5948 (DMC)** (Filed Jun. 2, 2003) WILLIAM T. WALSH, CLERK

TRAPP, and ABC CORPORATIONS 1-10 (a fictitious corporation) and JOHN and MARY DOES 1-10 (fictitious persons),

Defendants.

DENNIS M. CAVANAUGH, U.S. District Judge

This matter comes before the Court an the following motions: (1) motion [6-1 and 7-1] by Defendants, John P. Lacey, Esq. ("Lacey") and Connell Foley, LLP ("Connell Foley"), to dismiss the Complaint and for the imposition of sanctions pursuant to Rule 11 of the Federal Rule of Civil Procedure; (2) motion [10-1] by Defendants, Labor Management Concepts, Inc. ("Labor Management") and John, Munro (incorrectly captioned as "Monroe") ("Munro"), to dismiss the Complaint and to preclude Plaintiffs, Eileen GilGallon, Ronald Gilgallon and Shawn Gilgallon (collectively referred to as, "Plaintiffs"), from filing further Complaints against them; (3) motion [16-1] by Plaintiffs to vacate this Court's March 13, 2003, Order extending the time within which Defendants, Michael Cifelli, Mark Morchel ("Morchel") and Frank DeLeonardis ("DeLeonardis") had to file an Answer, move or otherwise reply to the Complaint; (4) motion [21-1] by Labor Management and Munro for the imposition of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure; (5) motion [23-1] by Plaintiffs for the entry of default against the County of Hudson (the "County"), Robert Janiszewski ("Janiszewski"),

DeLeonardis, Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Neil Carroll ("Carroll"), Vincent Ascolese ("Ascolese"), Neptalia Cruz ("Cruz"), William Braker ("Braker"), Nidia Davila-Colon ("Davila-Colon"), William O'Dea ("O'Dea"), Albert Cifelli, Silverio Vega ("Vega"), Maurice Fitzgibbons ("Fitzgibbons"), the State of New Jersey and Joseph Trapp ("Trapp"); (6) the motion [29-1] by Lacey and Connell Foley to strike Plaintiffs' March 26, 2003, letter brief; (7) motion [30-1] by Plaintiffs to strike the Answer filed on behalf of the County and Janiszewski, and for the imposition of sanctions: and (8) motion [40-1] by Plaintiffs to strike the untimely "[A]nswers and responses" of Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons. The motions were decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, (1) the motion [6-1 and 7-1] by Lacey and Connell Foley to dismiss the Complaint and for the imposition of sanctions is granted in part and denied in part; (2) the motion [10-1] by Labor Management and Munro to dismiss the Complaint and to preclude Plaintiffs from filing future Complaints against them is granted; (3) the motion [16-1] by Plaintiffs to vacate this Court's March 13, 2003, Order is denied as moot; (4) the motion [21-1] by Labor Management and Munro for the imposition of sanctions is granted; (5) the motion [23-1] by Plaintiffs for the entry of default against the County, Janiszewski DeLeonardis,

Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega, Fitzgibbons, the State of New Jersey and Trapp is denied; (6) the motion [29-1] by Lacey and Connell Foley to strike Plaintiffs' March 26, 2003, letter brief is **granted**; (7) the motion [30-1] by Plaintiffs to strike the Answer filed on behalf of the County of Hudson and Janiszewski, and for the imposition of sanctions is **denied**; and (8) the motion [40-1] by Plaintiffs to strike the "untimely [A]nswers and responses" of Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons is denied. Additionally, the State of New Jersey, Trapp, Michael Cifelli, DeLeonardis, Morchel, Janiszewski, the County, the Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons have joined the motions to dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case, which have been eloquently presented by the Honorable William G. Bassler, U.S.D.J. in his various Opinions in previous yet identical matters involving the same parties, are simple. In an effort to avoid unnecessarily expending this Court's judicial resources, and in the interests of judicial efficiency and economy, this Court's recitation

of the factual and procedural background is gleaned from Judge Bassler's previous Opinions.

A. State Court Proceedings:

Eileen Gilgallon is the President and owner of CFS Services, Inc. ("CFS"), a licensed private detective agency. She is also the wife of Ronald Gilgallon, who had previously been convicted of insurance fraud in violation of N.J.S.A. § 2C:5-1.

In 1995 and 1996, several companies, including CFS and Labor Management, submitted bids to the County to provide security services at several Hudson County public buildings, including the County Prosecutor's Office and Meadowview Hospital. Labor Management contends that due to the sensitive nature of the work and the contents of those buildings, the winning bidder needed to have moral integrity. Although CFS was the lowest bidder, it was disqualified by the County based on its suspected ties to Ronald Gilgallon. Thereafter Labor Management was deemed the lowest responsible bidder for both the 1995 and 1996 contracts.

CFS denied that it had any connection to Ronald Gilgallon and sued the County in the state court under the caption, *CFS Services, Inc. v. Board of Chosen Freeholders and Labor Management Concepts Inc.*, Docket Number 4726-95. The crux of CFS's lawsuit was to void the County's award of the bids to Labor Management, and to obtain the County's work. The County filed a cross-claim against Labor Management

seeking to recover the cost of certain unauthorized telephone charges that were incurred at a location where Labor Management provided security services.

On December 22, 1997, at a regular meeting of the County's Board of Chosen Freeholders (the "Board"), the Board passed a resolution authorizing the County's attorney to accept $30,000 from Labor Management to settle "any and all cross-claims" between the Board and Labor Management, "including the cost of the unauthorized telephone calls."

Pursuant to the Board's resolution, the County and Labor Management on December 26, 1997, entered into a Settlement Agreement and Release that resolved all claims between the parties. The parties also executed a Stipulation of Dismissal with Prejudice.

With respect to the action between CFS and Labor Management, the Superior Court ordered that the County conduct a hearing to determine whether CFS was a responsible bidder and therefore eligible to bid on the 1995 and 1996 contracts. After ten days of testimony, the hearing officer issued his findings and recommendation to the Board; the hearing officer found that CFS was not a responsible bidder for either the 1995 or 1996 contract because of Ronald Gilgallon's involvement with CFS. The Board subsequently adopted the hearing officer's findings and retroactively awarded both the 1995 and 1996 contracts to Labor Management.

After reviewing the transcripts of the hearing, the Superior Court upheld the County's decision. The trial court also denied CFS's motion to amend its Complaint to allow Plaintiffs, as taxpayers of the County, to sue Labor Management to recover money on behalf of the County, allegedly owed as a result of unauthorized telephone charges and alleged supervisory personnel overpayments.

The Superior Court of New Jersey, Appellate Division, affirmed the trial court's decision and agreed that there was sufficient credible evidence in the record to support the finding that CFS was not a responsible bidder. The appellate court also affirmed the validity of the Settlement Agreement and Release and held that the trial court did not err in denying leave to amend the Complaint to assert taxpayer claims through Eileen Gilgallon against Labor Management regarding managerial and telephone costs.

B. Federal Court Proceedings:

On or about February 4, 2000, Plaintiffs filed an eight count Complaint before Judge Bassler alleging that Labor Management intentionally violated its contract with the County by: (1) using the County telephone, without authorization; (2) failing to provide staff required under the contract and improperly submitting requests for payment when the required staff were not on site; and (3) being paid *ultra vires* without an appropriately executed contract for services rendered beginning in July 1995 to date. Judge

Bassler granted Defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because the Court found that the County settled and released all claims it had brought or could have brought against Labor Management. As such, the Court found that Plaintiffs were precluded from pursuing those claims as taxpayers on behalf of the County.

Dissatisfied with Judge Bassler's Opinion, Plaintiffs moved for reconsideration pursuant to Local Civil Rule 7.1(g). Labor Management cross-moved for the imposition of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. In denying Plaintiffs' motion, the Court concluded that the issues presented for reconsideration were adequately briefed by the parties and addressed by the Court in its January 31st Opinion. Judge Bassler specifically found that Plaintiffs merely rehashed arguments that were or could have been raised previously and essentially asked the Court to rethink that which it had already thought though. The Court also granted LMC's motion for the imposition of Rule 11 sanctions.

Plaintiffs, refusing to concede defeat, filed consecutive motions for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Plaintiffs based their motion on newly discovered evidence, fraud and any other reason justifying relief from the operation of the judgment. Plaintiffs also filed a motion for the disqualification of Judge Bassler, successive motions to stay the proceedings, and motion to strike Defendants' opposition brief and

second cross-motion for sanctions. On March 19, 2002, Judge Bassler denied Plaintiffs' motions and again imposed sanctions pursuant to Rule 11. Apparently, an appeal of the March 19th Opinion is currently pending before the United States Court of Appeals for the Third Circuit.

Undeterred by defeat and the imposition of sanctions, Plaintiffs filed another action in this Court in February 2002, and named R.C. Shea & Associates, Connell, Foley and Lacey, the County and the Division of Criminal Justice, presumably a division of the County as additional Defendants. The Honorable Ronald J. Hedges, U.S.M.J. administratively terminated the case, which was upheld by the Honorable Katherine S. Hayden, U.S.D.J. and the Third Circuit.

C. Present Matter:

On or about December 18, 2002, Plaintiffs filed a Complaint in this Court under Civil Action Number 02-5948. The Complaint seeks redress for allegations of conspiracy, racketeering, fraud, corruption, mail fraud, wire fraud, obstruction of justice, embezzlement, theft or services, attorney misconduct, defamation, damages resulting from the loss of contracts and punitive damages pursuant to 18 U.S.C. §§ 1341, 1343, 1962, 1964, 42 U.S.C. §§ 1983 and 1985, N.J.S.A. § 2C:41-2, and violations of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

This case is eerily similar to the previous ones; it has even taken almost the exact procedural form of the case previously dismissed by Judge Bassler. In that case, Judge Bassler addressed the same arguments and flurry of motions as submitted by Plaintiffs in this case, namely the alleged violations of Local and Federal Rules of Civil Procedure regarding filing procedures, motions to strike Defendants' opposition briefs, and motions for sanctions. The phrase "deja vu" certainly has its meaning here.

DISCUSSION

A. Standard for Motion to Dismiss:

When deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), all allegations in the Complaint must be taken as true and viewed in the light most favorable to the plaintiff. *See Warth v. Seldin,* 422 U.S. 490, 501 (1975); *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1988); *Robb v. Philadelphia,* 733 F.2d 286, 290 (3d Cir. 1984). In evaluating a Rule 12(b)(6) motion, a court may consider only the Complaint, exhibits attached to the Complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Furthermore, courts in the Third Circuit may review facts alleged in the Complaint, in documents explicitly relied upon or incorporated by reference into the Complaint, as well as other

documents integral to the Complaint. *In re Burlington Coat Factory Sec Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). "We must determine whether, under any reasonable reading of the pleadings, the plaintiffs may be entitled to relief, and we must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." *Nami v. Fawer,* 82 F.3d 63, 65 (3d Cir. 1996). While Federal Rule of Civil Procedure 8(a)(2) requires only a "short and plain statement of the claim showing that the pleader is entitled to relief," Rule 12(b)(6) is not without meaning. "Although the pleading requirements . . . are very liberal more detail is often required than the bald statement by plaintiff that he has a valid claim of some type against defendant." 5A Charles A. Wright and Arthur R. Miller, FEDERAL PRACTICE and PROCEDURE § 1357 at 318 (2d ed. 1990). If, after viewing the allegations in the Complaint in the light most favorable to the plaintiff, it appears beyond doubt that no relief could be granted "under any set of facts which could prove consistent with the allegations," a court shall dismiss a Complaint for failure to state a claim. *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984); *Zynn v. O'Donnell,* 688 F.2d 940, 941 (3d Cir. 1982).

B. Issues Concerning the Settlement Agreement and Release:

Without belaboring the issue, the motions by Lacey, Connell Foley, Labor Management and Munro, joined by Michael Cifelli, Morchel, DeLeonardis, Trapp,

the State of New Jersey, the County of Hudson and Janiszewski, to dismiss Plaintiffs Complaint are granted. In an effort to avoid unnecessarily expending this Court's judicial resources, and in the interests of judicial efficiency and economy, this Court adopts the January 31, 2001, March 30, 2001, and March 19, 2002, holdings and reasoning of Judge Bassler.

This lawsuit represents the fourth time that Plaintiffs attempt to litigate issues already decided. This Court, however, must expend even more resources to do that which has already been appropriately done, to wit dismissing Plaintiffs' Complaint. Briefly, Plaintiffs alleged in state court that Labor Management submitted inflated invoices, had been paid for work without a contract and had inappropriately used telephones that the County had installed at one of the sites at which Labor Management performed work. An investigation by the County revealed that unidentified individuals, presumably employees of Labor Management or the County, incurred telephone charges on the County's telephones. Apparently, the County was never reimbursed for the charges because it never billed Labor Management. The County and Labor Management settled the matter for $30,000. In exchange for Labor Management paying $30,000, the County agreed to dismiss with prejudice all claims that it had brought, or could have brought, against Labor Management. This Court notes that Judge Bassler made specific findings about the Settlement Agreement and Release and reiterates those findings for purposes of reinforcement

and adoption. It is indisputable that the claims presented by plaintiffs have already been decided by both state and federal courts. All seven counts of the Complaint are grounded in the County's refusal to award contracts to CFS and the alleged fraudulent Settlement Agreement, Release and Stipulation of Dismissal executed by and between the County and Labor Management. Plaintiffs again allege that the fraudulent Settlement Agreement, Release and Stipulation of Dismissal were stamped with a counterfeit stamp from the Superior Court of New Jersey in an attempt to deceive the state court into believing that the documents had been filed. As previously noted by Judge Bassler, "the entire foundation" of Plaintiffs' allegations has already been resolved by the state courts. Judge Bassler specifically found that CFS was properly disqualified from various contracts with the County because of its relationship with Ronald Gilgallon. Judge Bassler also recognized the validity of the Settlement Agreement and Release. Nothing has changed since Judge Bassler's Opinions and the state court decisions.

According to the express terms of the Settlement Agreement, the County's Board of Chosen Freeholders intended to, and did in fact, release the then existing claims as well as claims that could have been brought against Labor Management. The Settlement Agreement expressly states that the County conducted an extensive investigation of CFS's allegations against Labor Management:

> (b) [t]hat [Labor Management] had not been fully authorized by Freeholder Resolution to perform security guard services during the period of July 1995 through the present and was thus not entitled to payment during that period;
>
> (c) [t]hat [Labor Management] had applied for, and obtained, payments for more security guard service hours than had actually been worked.
>
> [Settlement Agreement, at ¶ 2.]

Other than evidence that telephone calls had been made from Meadowview Hospital and charged to the County, the County found no evidence of any wrongdoing by Labor Management. (*Id.* at ¶ 3).

Moreover, the Settlement Agreement reflects the parties intent to "settle this matter once and for all." (*Id.* at ¶ 5). It states that Labor Management agrees to pay, and the County agrees to accept, $30,000 "in full and final settlement of all claims and counterclaims that [the] County has filed, or could have filed against [Labor Management] based on conduct that occurred prior to the date of this Settlement Agreement." (*Id.*) More specifically, the Settlement Agreement provides that the County agrees to release Labor Management "from any and all other claims that the County might have against [Labor Management] arising out of security guard services provided by [Labor Management] during the period January 1, 1994 through the present." (*Id.* at 7).

The Settlement Agreement was determined to be valid by the New Jersey Superior Court, Appellate Division. In affirming the decision of the Law Division not to permit Plaintiffs to amend their Complaint, the appeals court noted the following:

> A taxpayer action against a local government is appropriate when there are claims of fraud or corruption, illegal bidding procedures or other instances of Illegalities and *ultra vires* acts, including *ultra vires* expenditures. *Loigman v. Township Comm. of Middletown*, 297 N.J. Super. 287, 295-96 (N.J. Super. Ct. App. Div. 1997). In this instance, the County did pursue claims against LMC similar to those sought to be asserted by Eileen Gilgallon as taxpayer and entered into a settlement providing for payment of [Labor Management] in the amount of $30,000. A local government acting lawfully and in good faith may compromise, adjust and settle claims against it in the same manner as a natural person, and the resulting settlement will have conclusive effect on other parties. *Edelstein v. City of Asbury Park*, 51 N.J. Super. 368, 389-90 (N.J. Super. Ct. App. Div. 1958). We concur with the conclusion of [the Law Division judge] that plaintiff did not show that the County acted illegally or beyond its authority in agreeing to settle matters with [Labor Management] and that there was no substantial reason presented to undermine the presumption of the validity of the settlement.

CFS Services, Inc. v. The Board of Chosen Freeholders of the County of Hudson and Labor Management Concepts. Inc., A-2646-97T5, at 9 (N.J. Super. Ct. App. Div. May 20, 1999).

Further, it appears that the County clearly had knowledge of, and had considered not only the allegation of unauthorized telephone calls, but also these other claims against Labor Management that Plaintiffs raise. At a December 22, 1997, Board of Chosen Freeholders meeting, Eileen Gilgallon and Shawn Gilgallon apparently advised the Board of their suspicions that Labor Management had stolen in excess of $250,000 from the County. They also spoke to the Board of Labor Management's alleged illegal billing, criminal theft, collusion and conspiracy. Consequently, Eileen Gilgallon and Shawn Gilgallon questioned why, in the face of such wrongdoing, the Board would consider settling the County's claims against Labor Management for only $30,000. Despite such accusations of Labor Management, the Board passed the Resolution authorizing settlement of any and all cross-claims between the Board and Labor Management, including the unauthorized telephone calls. The County settled and released all claims it had brought or could have brought against Labor Management; it is therefore precluded from pursuing the claims that were the subject of the settlement. In addition, Plaintiffs are precluded from pursuing those claims as taxpayers on behalf of the County. Accordingly, for the reasons set forth above and previously articulated by Judge Bassler, the motion to dismiss is granted.

C. Plaintiffs Lack Standing to Pursue Claims on Behalf of the County:

Plaintiffs lack the requisite standing to pursue claims presumably on behalf of the County. Rule 17(a) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[e]very action shall be prosecuted in the name of the real party in interest." FED. R. CIV. P. 17(a). Rule 17(a) further provides that "a party authorized by statute may sue in that person's own name." *Id.* This Court has not found, nor have Plaintiffs rated to, a statute authorizing them to act on the County's behalf. Lacey and Connell Foley, however, direct this Court's attention to *Carter v. Berger*, 777 F.2d 1173 (7th Cir. 1985), in which the Seventh Circuit affirmed the district court's dismissal of a Complaint filed by a group of taxpayers alleging that their property taxes increased because of the unlawful behavior of a defendant who admitted to obtaining lower tax assessments for the properties of his clients in violation of RICO. The Seventh Circuit cogently articulated the following:

> The taxpayers' injury derived from the County's, and although investors in private corporations sometimes may file suits in the right of the corporation, no similar doctrine allows derivative suits on behalf of agencies of government. The closest analogy is the *Qui Tam* action, a private suit in the right of the government with the recovery flowing to the government. *Qui Tam* suits are now specialties of statute. When the government

> takes over or dismisses the suit, the private party has no recourse.
>
> [777 F.2d at 1174.]

The procedural history of this case reveals that the County brought an action against Labor Management in state court and subsequently entered into a settlement, pursuant to which Labor Management paid $30,000, which Lacey and Connell Foley correctly indicate inured to the County's taxpayer's benefit. Thus, Plaintiffs in this case have no recourse as private parties.

C. Entire Controversy Doctrine:

Notwithstanding the issue concerning the Settlement Agreement and Release, the entire controversy doctrine bars Plaintiffs from bringing claims that they knew about during the pendency of former actions and that arose from related facts or the same transaction or series of transactions. *See Rhodes v. Township of Saddle Brook,* 980 F. Supp. 777, 781 (D.N.J. 1997) (Wolin, U.S.D.J.). "The entire controversy doctrine seeks to assure that all aspects of a legal dispute occur in a single lawsuit." *Id.* (Internal quotations omitted). The purposes of the doctrine are as follows: "(1) to encourage the comprehensive and conclusive determination of a legal controversy; (2) to achieve party fairness, including both parties before the court as well as prospective parties; and (3) to promote judicial economy and efficiency by avoiding fragmented, multiple and duplicative litigation." *Id.*

at 782. "In essence, '[t]he doctrine fosters the goals of efficient judicial administration and fairness' to parties." *Id.* (*Quoting Joel v. Morrocco,* 147 N.J. 546, 548 (1997) (quotation omitted).

In deciding whether an action is barred by the entire controversy doctrine, this Court must make three inquiries. First, this Court must determine whether the claims arise from related facts or the same transaction or series of transactions. *DiTrolio,* 142 N.J. at 267. Second, this Court must determine whether application of the doctrine would be fair to the parties. *Id.* at 272-77; *Circle Chevrolet,* 142 N.J. at 309-10. Finally, this Court must consider whether application of the doctrine would promote judicial economy and efficiency by avoiding the waste and delay occasioned by piecemeal litigation *Id.* at 277.

Here there is no question that Plaintiffs' current allegations and claims arise from the same or related facts or series of transactions involving security services provided to the County by Labor Management in and around 1995 and 1996 in federal court. Moreover, Plaintiffs and Labor Management were parties to the prior state court litigation and addressed the issues presented here.

Next, application of the doctrine is nothing short of fair to Defendants. In fact, not applying the doctrine would be grossly unfair to Defendants; they should not be subjected to the apparent "new" claims arising out of the same facts. This especially holds true for Labor Management, which paid $30,000 to

have any and all claims against it released. Defendants are entitled to finality and closure with respect to the claims currently pending before this Court.

Finally, the interests of judicial economy and efficiency compel the Court to apply the entire controversy doctrine. Responding to Plaintiffs' repetitive and legally insufficient claims burdens Defendants and the Court. A reasonable investigation of the facts and a normally competent level of legal research," *Mary Ann Pensiero Inc. v. Lingle*, 847 F.2d 90, 94 (3d Cir. 1988), would have revealed to Plaintiffs' that their claims are entirely without merit. Plaintiffs' claims in this case, like previous cases, arise from the same facts or series of transactions involving security services provided by Labor Management. Accordingly, for the reasons set forth above and previously articulated by Judge Bassler, the motion to dismiss is **granted**.

D. Res Judicata/Claim Preclusion:

Defendants argue that the application of *res judicata*, otherwise known as claim preclusion, requires dismissal of the Complaint. Because this case involves the same causes of action as the previous cases, and arises out of the same facts and set of transactions, this Court finds that the claims are barred.

The doctrine of *res judicata* prohibits repetitious litigation involving the same cause of action. *Untracht v. West Jersey Health System,* 803 F. Supp. 978,

982 (D.N.J. 1992), *aff'd,* 998 F.2d 1006 (3d Cir. 1993). Under the doctrine of claim preclusion, a complaint must be dismissed where there has been final judgment on the merits in a previous lawsuit involving the same parties or their privies and the subsequent suit is based upon the same transaction or occurrence. *Arab-African National Bank v. Epstein,* 10 F.3d 168, 171 (3d Cir. 1993). The *res judicata* doctrine provides that when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to the suit and their privies are bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell v. County of Sac,* 94 U.S. 351, 352 (1875); *Tonka,* 836 F. Supp. at 212. United States Court of Appeals Judge Morton I. Greenberg for the Third Circuit articulated the function of *res judicata* as follows:

> *Res judicata* or claim preclusion operates to prevent a party from raising or defending against a claim that already has been decided. As the Supreme Court recognized in *Nevada v. United States,* 463 U.S. 110, 103 S. Ct. 2906, 77 L. Ed. 2d 509 (1983): "[T]he doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, "[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but

> as to any other admissible matter which might have been offered for that purpose' . . . The final 'judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever.'"
>
> [*Robertson v. Bartels,* 148 F. Supp. 2d 443, 448 (D.N.J. 2001).]

Claims that were not raised in the previous action, but could have been, are barred. *Swineford v. Snyder County,* 15 F.3d 1258, 1266 (3d Cir. 1994); *Edmunson v. Borough of Kennett Square,* 4 F.3d 186, 189 (3d Cir. 1993). The doctrine is based on considerations of judicial economy and public policy favoring the establishment of certainty in legal relations. *Commissioner v. Sunnen,* 333 U.S. 591, 597 (1948).

The fundamental elements necessary to invoke res judicata are: "(1) the judgment in the first action must be valid, final and on the merits; (2) the parties in the later action must be the same as, or in privity with those in the first action; and (3) the claim(s) in the later action must grow out of the same transaction or occurrence as the claim in the earlier one." *Hubicki v. ACF Industries, Inc.,* 484 F.2d 519, 524 (3d Cir. 1973); *Trucking Employees*, 983 F.2d at 504; *Tonka,* 836 F. Supp. at 212. In determining whether two causes action are the same, the Court must consider "(1) whether the wrong for which redress is sought is the same in both actions (that is, whether the acts complained of and the demand for relief are the same), (2) whether the theory of recovery is the

same, (3) whether the witnesses and the document necessary at trial are the same and (4) whether the material facts alleged are the same. *Tonka*, 836 F. Supp. at 212 (citing *Facchino Constr. Co., Inc. v. U.S. Dept. of Labor*, 987 F.2d 206, 212 (3d Cir. 1993)).

In this case, like the prior ones, Plaintiffs seek to re-litigate claims previously decided against them on their merits. The Law Division originally rejected Plaintiffs' claims, and the Appellate Division affirmed. Judge Bassler rejected Plaintiffs' claims and on at least two occasions denied reconsideration. Judge Hedges rejected the claims on *res judicata* grounds. Accordingly, for the reasons set forth above and previously articulated by Judge Bassler, the motion to dismiss is **granted**.

E. Rule 11 Sanctions Imposed by Judge Bassler:

Judge Bassler's March 29, 2001, and March 19, 2002, Opinions and Orders granted the motions by Labor Management and Munro for the imposition of Rule 11 sanctions. Apparently, Plaintiffs have failed to pay the sanctions. Therefore, this Court holds that Plaintiffs shall pay the sanctions imposed by Judge Bassler within fourteen (14) days from their receipt of this Opinion and accompanying Order. Payment of the sanctions imposed herein, which must be paid within fourteen (14) days from the receipt of this Opinion and Order, are addressed below.

F. Motion for Sanctions by Labor Management & Munro:

Labor Management and Munro move for the imposition of sanctions pursuant Rule 11 of the Federal Rules of Civil Procedure. Sanctions are unquestionably warranted in this case. Rule 11 provides the following regarding representations to the Court:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,
>
> (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> [FED. R. CIV. P. 11.]

Congress amended Rule 11 in 1983 to give the courts greater authority to impose sanctions in order to discourage wasteful and abusive tactics. *See Bus. Guides, Inc. v. Chromatic Communications Enter., Inc.*, 498 U.S. 533, 542 (1991); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990); *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1986); *Miller v. Beneficial Mgmt. Corp.*, 844 F. Supp. 990, 1005 (D.N.J. 1993). Rule 11 provides an exception to the traditional American rule requiring each litigant to bear its own costs and attorneys' fees. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975); *Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 504 (3d Cir.), *cert. denied*, 502 U.S. 940 (1991); *Doering v. Union County Bd. of Chosen Freeholders*, 857 F.2d 191, 193 (3d Cir. 1988); *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 483 (3d Cir. 1987); *Miller*, 844 F. Supp. at 1005. The primary purpose in providing an award of attorneys' fees, however, is not "wholesale fee shifting but correction of litigation abuse." *Gaiardo*, 835 F.2d at 483; *Quiroga*, 934 F.2d at 504; *Miller*, 844 F. Supp. at 1005.

Consequently, sanctions are appropriate when the "'claim or motion is patently unmeritorious or frivolous.'" *Dura Systems, Inc. v. Rothbury Invest. Ltd.*, 886 F.2d 551, 556 (3d Cir. 1989) (*quoting Doering*, 857

F.2d at 194), *cert. denied*, 493 U.S. 1046 (1990); *see also Landon v. Hunt*, 938 F.2d 450, 452 (3d Cir. 1991); *Napier v. Thirty or More Unidentified Fed. Agents*, 855 F.2d 1080, 1091 (3d Cir. 1988); *Downey v. United Food & Commercial Workers Union Local 1262*, 946 F. Supp. 1141, 1160 (D.N.J. 1996); *Miller*, 844 F. Supp. at 1006; *Princeton Economics Group, Inc. v. AT & T*, 7689 F. Supp. 1101, 1116 (D.N.J. 1991). Where an abuse of litigation or misuse of the judicial system is found, Rule 11 sanctions are appropriate against the signer of the document, be it the attorney or the party. *Bus. Guides, Inc.*, 498 U.S. at 543-46; *Simmerman v. Corino*, 27 F.3d 58, 62 (3d Cir. 1994) (*citing Teamsters Local Union No. 430 v. Cement Express, Inc.*, 841 F.2d 66, 68 (3d Cir.), *cert. denied sub nom., Herman Bros. Inc. v. Teamsters Local Union No. 430*, 488 U.S. 848 (1988)); *Downey*, 946 F. Supp. at 1160.

Rule 11 places a duty on the signer of the document to "make an inquiry into both the facts and the law which is 'reasonable under the circumstances.'" *Zuk*, 103 F.3d at 299 (*quoting* Rule 11 Advisory Committee Note); *see Clinton v. Jones*, 520 U.S. 681, 709 n.42 (1997) (*quoting* Rule 11(b)(1),(3)) (sanctions appropriate where allegations "lack[ ] evidentiary support' or [are] unlikely to prove well grounded after reasonable investigation"); *Bensalem Township v. Int'l Surplus Lines, Ins. Co.*, 38 F.3d 1303, 1314 (3d Cir. 1994) ("Rule [11] imposes an affirmative duty on the parties to conduct a reasonable inquiry into the applicable law and facts prior to filing."); *Bradgate*

Associates, Inc. v. Fellows, Read & Assocs., Inc., 999 F.2d 745, 751 (3d Cir. 1993) (*citing Bus. Guides, Inc.*, 498 U.S. at 543) (same); *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 496 (3d Cir. 1989) (same).

In deciding a motion for sanctions under Rule 11, a court must apply an objective standard of reasonableness under the circumstances existing at the time the document was submitted. *Chambers v. MASCO, Inc.*, 501 U.S. 32, 47 (1991), *reh'g denied*, 501 U.S. 1269 (1991); *Bus. Guides, Inc.*, 498 U.S. at 548; *Eavenson Auchmuty & Greenwald v. Holtzman*, 775 F.2d 535, 541 (3d Cir. 1985); *Downey*, 946 F. Supp. at 1160; *Miller*, 844 F. Supp. at 1006. This is "a more stringent standard than the original good faith formula." *Eavenson*, 775 F.2d at 540; *see Miller*, 844 F. Supp. at 1006. No proof of subjective bad faith is required to levy sanctions. *See Martin v. Brown*, 63 F.3d 1252, 1264 (3d Cir. 1995) (citations omitted); *Napier*, 855 F.2d at 1091; *Downey*, 946 F. Supp. at 1160.

"The court must evaluate the signer's conduct 'by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted,' an evaluation which should depend on a variety of factors, including 'whether the pleading, motion, or other paper was based on a plausible view of the law.'" Dura Systems, 886 F.2d at 556 (quoting Rule 11 Advisory Committee Note). Under this standard, "[l]itigants misuse the Rule when sanctions are sought against a party or counsel whose only sin was

being on the unsuccessful side of a ruling or judgment." *Gaiarda,* 835 F.2d at 483; *see Miller,* 844 F. Supp. at 990.

Rule 11 specifically requires that "[a] motion for sanctions under this rule shall be made separately from other motions or requests . . . " FED. R. CIV. P. 11(c)(1)(A). Although Local Civil Rules require that motions for sanctions be filed with the Clerk of the Court "prior to the entry of final judgment[,]" (L. CIV. R. 11.3), it should not be construed to override the mandate of Rule 11 that motions for sanctions be separately made. *LITE, N.J. FEDERAL PRACTICE RULES, Comment 2 to L. Civ. R. 11.3 (2003 ed. GANN)*; *Downey v. United Food & Commercial Workers Union Local 1262*, 946 F. Supp. 1141, 1159-60 (D.N.J. 1996) (Lechner, U.S.D.J.).

Plaintiffs first argue that the motion should be denied because Labor Management and Munro violated the safe harbor provision of Rule 11. (Pls.' Mar. 31, 2003, Br. Opp'n at p. 1). This Court disagrees. On February 28, 2003, Labor Management and Munro mailed to Plaintiffs the safe harbor letter and a copy of the motion for sanctions. After waiting twenty-one days for Plaintiffs to withdraw the Complaint Labor Management and Munro to appropriately filed their motion.

Plaintiffs also argue that the imposition of sanctions is inappropriate because their Complaint is "well grounded in both fact and law" and the allegations contained therein "are ripe for review and were

not the subject matter during earlier proceedings." (Pls.' Mar. 6, 2003, Br. Opp'n at p. 20). Not surprisingly, Labor Management and Munro vehemently disagree. This Court concludes that the Complaint seeks that which has already been sought or could have been sought in previous actions and is merely another hopeful attempt at a favorable ruling. Various state and federal judges have already ruled on the very issues presented in the instant action. As previously noted, sanctions have already been imposed by Judge Bassler, who concluded that Plaintiffs' claims were frivolous. (*See* Opinion, Mar. 29, 2001, p. 13 ("In view of the fact that Plaintiffs' claims have not only been settled and released by the County, but are also clearly barred by the entire controversy doctrine, such claims are unwarranted by existing law. Accordingly, Rule 11 sanctions will be imposed against Plaintiffs."); Opinion, Mar. 19, 2002 p. 13 ("This Court finds sanctions against Plaintiffs in this situation are more than justified. Plaintiffs have abused the judicial process at every turn, filing vexatious pleadings, frivolous motions, relitigating stale issues and repeatedly filing motions with this Court, knowing full well that their case was dismissed and closed months ago.")) This Court finds sufficient justification to again award sanctions to Labor Management and Munro. Therefore, the motion for sanctions **is granted** and Labor Management and Munro are awarded sanctions for the reasonable counsel fees and costs incurred in defense of the present action. Counsel is directed to make an application for

fees and costs supported by a certification of counsel and billing records.

G. Motion for Rule 11 Sanctions by Lacey and Connell Foley:

Lacey and Connell Foley move for the imposition of sanctions pursuant [sic] Rule 11. This Court follows the standard set forth above. Pursuant to the standard, this Court specifically notes that Rule 11 requires that "[a] motion for sanctions under this rule *shall* be made separately from other motions or requests." FED. R. CIV. P. 11(c)(1)(A). Although Local Civil Rules require that motions for sanctions be filed with the Clerk of the Court "prior to the entry of final judgment[,]" (L. CIV. R. 11.3), it should not be construed to override the mandate of Rule 11 that motions for sanctions be separately made. *LITE, N.J. FEDERAL PRACTICE RULES, Comment 2 to L. CIV. R. 11.3 (2003) ed. GANN)*; *Downey v. United Food & Commercial Workers Union Local 1262,* 946 F. Supp. 1141, 1159-60 (D.N.J. 1996) (Lechner, U.S.D.J.). Indeed, the arguments proffered in support of sanctions appear in the same brief in support of the motion to dismiss. This Court recognizes, however, that Lacey and Connell Foley filed two separate and distinct notices of motion, which satisfies the separate and distinct mandate of the Rule.

Rule 11 motions must also be served pursuant to Rule 5, "but *shall not be filed with or presented to the court* unless, within 21 days after service of the

motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." FED. R. CIV. P. 11(c)(1)(A) (emphasis supplied). This is commonly referred to as the safe harbor provision. Robert E. Bartkus described the function and process of the safe harbor provision as follows:

> [U]nder the rule, the motion must not be filed with the court until at least 21 days after it has been served on the parties. Thus, the moving party prepares the motion and serves it on the other side; the original is retained by the moving party. The offending party has 21 days after service to withdraw or correct the offending pleading, in which case the motion becomes moot. If the offending pleading is not withdrawn or corrected, then the moving party may file the motion with the clerk of the court, and the normal motion process takes over.
>
> [ROBERT E. BARTKUS, NEW JERSEY FEDERAL CIVIL PROCEDURE, § 20-2:4-1 (1999).]

In this case, Lacey and Connell Foley on February 13, 2003, sent by certified mail, return receipt requested, a letter notifying Plaintiffs that they had twenty-one days to withdraw the Complaint. Accompanying the letter was a copy of the proposed motion seeking Rule 11 sanctions. Lacey and Connell Foley, however, filed or otherwise presented a copy of the motion to the Clerk of this Court on February 14, 2003. According

to the docket sheet, the motion was filed on February 14, 2003, and was returnable on March 24, 2003.

Indeed, sanctions are clearly warranted. Nevertheless, this Court must **deny without prejudice** the motion for the technical reasons just stated. It should be noted, however, that this decision is not based on the merits; if Lacey and Connell Foley re-file the motion pursuant to the procedures set forth in Rule 11, this Court would consider the merits of the motion.

H. Plaintiffs' Motion to Vacate Defendant's Extension to Answer, Move or Otherwise Reply:

On or about March 18, 2003, Plaintiffs filed a motion to vacate a March 12, 2003, Order issued by this Court. The Order granted a request by Anthony J. DeSalvo, Esq., counsel to Michael Cifelli, DeLeonardis and Morchel, for an extension of time to file an Answer, move or otherwise reply. Additionally, Michael Cifelli, DeLeonardis and Morchel stated their intent to join the motions to dismiss. Plaintiff now seeks to vacate the Order because they argue its submission violates Rule 6(b).

It is within this Court's discretion to enlarge the time within which to file an Answer, move or otherwise reply for good cause shown. *See* FED. R. CIV. P. 6(b). Therefore Plaintiffs' motion is **denied** pursuant to the Order entered on March 13th and because the motion is now moot.

I. Connell, Foley & Lacey Motion to Strike Plaintiffs' Letter March 26th Letter Brief:

On or about April 3, 2003, Lacey and Connell Foley filed a motion to strike Plaintiffs' Letter Brief dated March 26, 2003. This Court agrees with the contentions proffered by Lacey and Connell Foley, namely that Plaintiffs may not file a sur-reply brief. Accordingly, the motion is **granted** and this Court stresses that the arguments made in the sur-reply were not considered in the resolution of the instant motions.

J. Plaintiffs' Motion for Entry of Default Against Various Defendants:

On or about March 31, 2003, Plaintiffs filed a motion for the entry of default pursuant to Rule 55 of the Federal Rules of Civil Procedure against the County, Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the County's Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega, Fitzgibbons, the State of New Jersey and Trapp. At the outset, the Court **denies** the motion as to Michael Cifelli, DeLeonardis and Morchel for the reasons set forth above in section H of this Opinion.

The entry of default is governed by Rule 55 of the Federal Rules of Civil Procedure. Pursuant to Rule 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that

fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." FED. R. CIV. P. 55(a).

On or about March 17, 2003, the County and Janiszewski moved for an Order seeking an extension of time within which to file an Answer, move or otherwise reply to the Complaint. On March 19, 2003, this Court entered an Order providing that the County and Janiszewski file an Answer or otherwise plead no later than April 1, 2003. Also pursuant to the March 17th letter, the County and Janiszewski sought permission to join in the motions to dismiss. The request was granted. As a result, the motion by Plaintiffs for the entry of default against the County and Janiszewski is **denied**.

Plaintiffs also request that the Clerk's office enter default against Fitzgibbons, Vega, Albert Cifelli, O'Dea, Davila-Colon, Braker, Cruz, Ascolese, Carroll, and the County's Board of Chosen Freeholders. On or about April 8, 2003, the Board of Chosen Freeholders and the individual Freeholders sought, and this Court granted, an extension of time within which to file an Answer, move or otherwise reply. According to the Order, the Answer was to have been filed no later than May 1, 2003. On April 29, 2003, the Answer was timely filed. Therefore, pursuant to the Order entered by this Court, the motion for the entry of default against Fitzgibbons, Vega, Albert Cifelli, O'Dea, Davila-Colon, Braker, Cruz, Ascolese, Carroll, and the County's Board of Chosen Freeholders is **denied**.

K. Plaintiffs' Motion to Strike Answer by the County and Janiszewski and Issue Sanctions:

On or about April 7, 2003, Plaintiffs filed a motion to strike the Answer filed on behalf of the County and Janiszewski. Plaintiffs also seek the imposition of sanctions. Both motions are **denied**.

On March 17, 2003, Joyce Calefati Booth, Esq. ("Booth"), a member of the law firm of Brownstein, Booth & Barry, requested an extension of the time on behalf of the County and Janiszewski to file an Answer out of time. This Court granted that request, as Plaintiffs put it "[f]or reasons that have yet to be explained" (Pls.' Letter Br. Supp. Strike, at 1). Booth also sought leave to join the motions to dismiss, which this Court also granted. Thereafter, Jennifer L. Morris, Esq. an associate with the law firm of Bielan, Miklos, Morris & Marley, P.C., who apparently now represents Janiszewski, filed an Answer and requested to join the motions to dismiss on behalf of the former Hudson County Executive. Plaintiffs contend that the substitution of attorney is not procedurally sound and, as such, the Answer should be stricken and sanctions should be imposed. This Court, however, disagrees with Plaintiffs' contentions because the issue concerning which firm filed the Answer is irrelevant. The relevant issue is Booth's indication that the County and Janiszewski intended to join the motions to dismiss, which was done while she represented them and prior to any Answer being filed. Therefore, because the Complaint is dismissed as to all Defendants, any issue concerning the Answer by

the County and Janiszewski, which was filed after they joined the motions to dismiss, is denied as moot.

L. Plaintiff's Motion to Strike "[U]ntimely [A]nswers and [R]esponses by [Certain] Defendants":

On or about May 1, 2002, Plaintiffs filed a motion seeking an Order striking the "untimely [A]nswers and responses" of Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the County's Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons. Plaintiffs argue that Defendants violated various Federal Rules of Civil Procedure, charges that they acted in bad faith and suggest that Defendants are the ones seeking a second bite at the apple. (Pls.' Letter Br. Opp'n at pp. 1-4). Specifically, Plaintiffs contend that Defendants' Answers and responses should be stricken because they violated Rules 5.1(c) and 7.1(D)(2) of the Local Civil Rules, and Rules 6(b)(2), 7(b)(1) and 12(a)(1)(A) of the Federal Rules of Civil Procedure. Because all Defendants have joined the motions to dismiss and because dismissal is granted, Plaintiffs' motion is **denied as moot**.

L. [sic] Prohibition of Future Complaints Against All Defendants:

Labor Management and Munro request that this Court enter an Order dismissing the case and sanctioning Plaintiffs, and prohibiting Plaintiffs from

filing any future Complaints against them without prior approval from this Court.

Plaintiffs have tried for a favorable ruling in both the state and federal courts in New Jersey, losing on every occasion. Dissatisfied with the outcome of their cases, Plaintiffs presently try again before me. It should also be noted that a Chaser search revealed that Plaintiffs also attempted to have Judge Bassler disqualified because he was allegedly biased and accepted documents from Defendants that were never filed with the Clerk's office. Ultimately, Plaintiffs claimed that Judge Bassler was over sympathetic to Defendants and was incapable of being impartial. This Court questions the real motivations for Plaintiffs' moving to disqualify Judge Bassler.

This Court is deeply troubled by Plaintiffs' cavalier behavior. Plaintiffs have routinely dissipated the resources of this Court, starting with Judge Bassler and ending, once and for all, with me. This Court and the judicial process are to be respected, not abused; it serves to render justice, impartially and unbiased pursuant to the dictates of the law, not to serve at Plaintiffs' behest or render rulings pursuant to Plaintiffs' persistence. It is for those reasons that this Court finds it appropriate to grant the request by Labor Management and Munro. The request, however, will be extended to cover each and every Defendant listed in the caption of the Complaint. Accordingly, Plaintiffs are barred from commencing future actions against any and all Defendants in this action without prior approval from this Court. A copy

of my Order will be supplied to those other Judges who presently have matters before them filed by Plaintiffs.

CONCLUSION

Based on the foregoing, (1) the motion [6-1 and 7-1] by Lacey and Connell Foley to dismiss the Complaint and for the imposition of sanctions **is granted in part** and **denied in part**; (2) the motion [10-1] by Labor Management and Munro to dismiss the Complaint and to preclude Plaintiffs from filing future Complaints against them **is granted**; (3) the motion [16-1] by Plaintiffs to vacate this Court's March 13, 2003, Order **is denied** as moot; (4) the motion [21-1] by Labor Management and Munro for the imposition of sanctions **is granted**; (5) the motion [23-1] by Plaintiffs for the entry of default against the County, Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega, Fitzgibbons, the State of New Jersey and Trapp **is denied**; (6) the motion [29-1] by Lacey and Connell Foley to strike Plaintiff's March 26, 2003, letter brief **is granted**; (7) the motion [30-1] by Plaintiffs to strike the Answer filed on behalf of the County of Hudson and Janiszewski, and for the imposition of sanctions **is denied**; and (8) the motion [40-1] by Plaintiffs to strike the "untimely [A]nswers and responses" of Janiszewski, DeLeonardis, Morchel, Michael Cifelli, the Hudson County Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker,

Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons **is denied**. Additionally, the State of New Jersey, Trapp, Michael Cifelli, DeLeonardis, Morchel, Janiszewski, the County, the Board of Chosen Freeholders, Carroll, Ascolese, Cruz, Braker, Davila-Colon, O'Dea, Albert Cifelli, Vega and Fitzgibbons have joined the motions **to dismiss**. Plaintiffs shall pay the sanctions previously imposed by Judge Bassler, and presently imposed by me, within fourteen (14) days from the receipt of this Opinion and accompanying Order. Lastly, Plaintiffs may not file another Complaint against any of the ‹ tioned Defendants unless prior written approval is given by this Court. An appropriate Order accompanies this Opinion.

/s/ Dennis M. Cavanaugh
DENNIS M. CAVANAUGH,
U.S.D.J.

Dated: May 30, 2003